

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 FRONTIER AIRLINES, INC.,
6 Plaintiff,

7 - against -

8 AMCK AVIATION HOLDINGS IRELAND
LIMITED, ACCIPITER INVESTMENT 4
9 LIMITED, VERMILLION AVIATION (TWO)
LIMITED, WELLS FARGO TRUST COMPANY,
10 N.A., solely in its capacity as OWNER
TRUSTEE, and UMB BANK, N.A., solely in
11 its capacity as OWNER TRUSTEE,
12 Defendants.

13 CASE NO.: 1:20-cv-09713-LLS

-----X

14
15 * * * C O N F I D E N T I A L * * *

16
17 ZOOM VIDEOCONFERENCE

18
19 March 30, 2022

20 9:04 a.m. MDT

21 DEPOSITION of SPENCER THWAYTES,
22 before Melissa Gilmore, a Stenographic Reporter
23 and Notary Public of the State of New York.

24
25 Job No. NY5155592

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3 LANE POWELL PC</p> <p>4 Attorneys for Plaintiff</p> <p>5 601 SW Second Avenue, Suite 2100</p> <p>6 Portland, Oregon 97204-3158</p> <p>7 BY: DAVID G. HOSENPUD, ESQ.</p> <p>8 E-MAIL hosenpudd@lanepowell.com</p> <p>9</p> <p>10</p> <p>11 CLIFFORD CHANCE US LLP</p> <p>12 Attorneys for Defendants</p> <p>13 31 West 52nd Street</p> <p>14 New York, New York 10019-6131</p> <p>15 BY: JOHN P. ALEXANDER, ESQ.</p> <p>16 GEGE WANG, ESQ.</p> <p>17 JEFF BUTLER, ESQ. (Afternoon Session Only)</p> <p>18 E-MAIL john.alexander@cliffordchance.com</p> <p>19 gege.wang@cliffordchance.com</p> <p>20 jeff.butler@cliffordchance.com</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 S P E N C E R T H W A Y T E S, called as</p> <p>3 a witness, having been duly placed under</p> <p>4 oath by a Notary Public, was examined and</p> <p>5 testified as follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. ALEXANDER:</p> <p>8 Q. Good morning, Mr. Thwaytes. My name</p> <p>9 is Jack Alexander. I'm from the law firm of</p> <p>10 Clifford Chance, and with me is Gege Wang, also</p> <p>11 from Clifford Chance, and we represent the</p> <p>12 defendants in the litigation called Frontier</p> <p>13 versus AMCK and others.</p> <p>14 Mr. Thwaytes, is this the first time</p> <p>15 you have had your deposition taken?</p> <p>16 A. It is.</p> <p>17 Q. Could you please tell us what your</p> <p>18 role is at Frontier Airlines?</p> <p>19 A. Sure. I'm the vice president and</p> <p>20 treasurer at Frontier Airlines.</p> <p>21 Q. And what are your job</p> <p>22 responsibilities?</p> <p>23 A. I oversee the treasury department,</p> <p>24 fleet department, strategic sourcing department</p> <p>25 and tax department.</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 FEDERAL STIPULATIONS</p> <p>3</p> <p>4 IT IS STIPULATED AND AGREED by</p> <p>5 and between the attorneys for the respective</p> <p>6 parties herein, that the filing, sealing,</p> <p>7 and certification of the within deposition</p> <p>8 be waived.</p> <p>9 IT IS FURTHER STIPULATED AND</p> <p>10 AGREED that all objections, except as to the</p> <p>11 form of the question, shall be reserved to</p> <p>12 the time of the trial.</p> <p>13 IT IS FURTHER STIPULATED AND</p> <p>14 AGREED that the within deposition may be</p> <p>15 sworn to and signed before any officer</p> <p>16 authorized to administer an oath, with the</p> <p>17 same force and effect as if signed to before</p> <p>18 the Court.</p> <p>19</p> <p>20</p> <p>21 - oOo -</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 (Reporter clarification.)</p> <p>3 Q. Mr. Thwaytes, so you mentioned that</p> <p>4 your job responsibilities, just to confirm, are</p> <p>5 you oversee the treasury department, the fleet</p> <p>6 department, strategic sourcing and tax.</p> <p>7 Do I have that right?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And, generally speaking, what</p> <p>10 is your role with respect to overseeing the</p> <p>11 treasury department?</p> <p>12 A. Are you asking what the treasury --</p> <p>13 treasury department's roles and</p> <p>14 responsibilities are or what are my</p> <p>15 interactions with the department?</p> <p>16 Q. Generally -- that's a fair request.</p> <p>17 Generally, what are the</p> <p>18 responsibilities of the treasury department?</p> <p>19 A. We make all of the payments. We</p> <p>20 receive all of the inflows of cash. We invest</p> <p>21 excess cash. We buy and manage all the</p> <p>22 insurance policies, buy and manage all of the</p> <p>23 physical fuel. We place letters of credit and</p> <p>24 surety bonds. We finance the business outside</p> <p>25 of aircraft leases.</p>

<p style="text-align: right;">Page 6</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Those are the main responsibilities</p> <p>3 of the treasury department.</p> <p>4 Q. You also mentioned the fleet</p> <p>5 department.</p> <p>6 What are the main responsibilities</p> <p>7 of the fleet department?</p> <p>8 A. Financing the aircraft with --</p> <p>9 financing the aircraft with leases, managing</p> <p>10 the relationships with Airbus and the engine</p> <p>11 manufacturer and other aircraft-related</p> <p>12 relationships; seats, BPUs, all of the other</p> <p>13 tangential aspects of speccing out aircraft and</p> <p>14 all of the components of all of the aircraft.</p> <p>15 Q. You mentioned managing the</p> <p>16 relationship with Airbus.</p> <p>17 Is Airbus the only manufacturer that</p> <p>18 Frontier deals with?</p> <p>19 A. Yes. The only manufacturer that</p> <p>20 Frontier does business with at this time.</p> <p>21 Q. You also mentioned the strategic</p> <p>22 sourcing department.</p> <p>23 What are the main responsibilities</p> <p>24 of that department?</p> <p>25 A. Negotiating contracts for many of</p>	<p style="text-align: right;">Page 8</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 A. It's a transaction where an airline</p> <p>3 takes delivery of an aircraft from its order</p> <p>4 book, and then sells the aircraft to a lessor,</p> <p>5 and then the lessor leases the aircraft back to</p> <p>6 the airline for a period of time.</p> <p>7 Q. You said that the Framework</p> <p>8 Agreement concerns a number of sale-leaseback</p> <p>9 transactions.</p> <p>10 Do you know how many?</p> <p>11 A. Five sale-leaseback transactions,</p> <p>12 but I'm not a hundred percent certain. We're</p> <p>13 doing many sale-leaseback transactions with</p> <p>14 many lessors, so...</p> <p>15 Q. If I told you it was six, would that</p> <p>16 also --</p> <p>17 A. Yeah, five or six. I know that</p> <p>18 there was a number contemplated, and then there</p> <p>19 was one aircraft delivered under this Framework</p> <p>20 Agreement, and then a number of aircraft that</p> <p>21 had not been delivered at the time that these</p> <p>22 dealings were going on.</p> <p>23 Q. Prior to the Framework Agreement</p> <p>24 between AMCK and Frontier, did Frontier already</p> <p>25 lease a number of aircraft from AMCK or its</p>
<p style="text-align: right;">Page 7</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 the defendants within the business across a</p> <p>3 wide range of disciplines; commercial, IT, tech</p> <p>4 ops, ground handling. Just kind of across a</p> <p>5 swath of the business.</p> <p>6 There are some contracts that are</p> <p>7 managed outside of strategic sourcing, but many</p> <p>8 of them are managed within strategic sourcing.</p> <p>9 Q. Mr. Thwaytes, do you understand that</p> <p>10 this lawsuit relates to the termination of a</p> <p>11 Framework Agreement between AMCK and Frontier</p> <p>12 dated March 16, 2020?</p> <p>13 A. Yes.</p> <p>14 Q. Just going forward, I will refer to</p> <p>15 that as the Framework Agreement.</p> <p>16 Will you understand what I'm</p> <p>17 referring to?</p> <p>18 A. I will.</p> <p>19 Q. Does the Framework Agreement concern</p> <p>20 a sale-leaseback transaction?</p> <p>21 A. Yes, Framework Agreement</p> <p>22 contemplates a number of sale-leaseback</p> <p>23 transactions for the aircraft.</p> <p>24 Q. Just generally speaking, what does a</p> <p>25 sale-leaseback transaction consist of?</p>	<p style="text-align: right;">Page 9</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 affiliates through owner trusts?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know how many other aircraft</p> <p>5 Frontier leased?</p> <p>6 A. AMCK. Was it 12 or 14? I forget.</p> <p>7 I may be mixing AMCK up with another lessor</p> <p>8 that at the same time that we ran an RFP for a</p> <p>9 number of aircraft, and then AMCK, I believe,</p> <p>10 may have purchased some additional aircraft,</p> <p>11 the Innovation.</p> <p>12 So I'm not sure the exact amount at</p> <p>13 the time, but more than ten.</p> <p>14 Q. Do you understand that each of those</p> <p>15 leases is governed by an individual Lease</p> <p>16 Agreement?</p> <p>17 A. I understand that they are governed</p> <p>18 by an individual Lease Agreement. I am not</p> <p>19 sure whether the individual Lease Agreement --</p> <p>20 I'm not sure to the extent that the individual</p> <p>21 Lease Agreements are interacting with each</p> <p>22 other.</p> <p>23 Q. Those agreements are generally in --</p> <p>24 those agreements -- strike that.</p> <p>25 Frontier is the lessee in those</p>

<p style="text-align: right;">Page 10</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Lease Agreements, correct?</p> <p>3 A. Frontier is the lessee.</p> <p>4 Q. And the lessor is an owner trust</p> <p>5 entity that's either UMB or Wells Fargo, right?</p> <p>6 A. Yes, there's been -- that's correct.</p> <p>7 There's an owner trustee involved.</p> <p>8 Q. Going forward today, I'm going to</p> <p>9 refer to those 14 Lease Agreements -- or 12 or</p> <p>10 14, whatever it is, as the 14 Lease Agreements</p> <p>11 or the 14 original leases.</p> <p>12 Will you understand what I'm</p> <p>13 referring to?</p> <p>14 A. Yes.</p> <p>15 Q. Frontier was required to pay rent in</p> <p>16 connection with each of those Lease Agreements,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. The rent was due monthly?</p> <p>20 A. Yes.</p> <p>21 Q. And for each Lease Agreement, would</p> <p>22 the monthly rent amount be due on the same</p> <p>23 calendar day each month?</p> <p>24 A. I'm not certain, in these leases, if</p> <p>25 it's the same calendar day each month or</p>	<p style="text-align: right;">Page 12</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 calculated would be starting from the next --</p> <p>3 from the Monday after the weekend or if the</p> <p>4 payment would fall on the Friday before the</p> <p>5 weekend. I'm not sure in this case -- or in</p> <p>6 these leases.</p> <p>7 Q. As part of your job of overseeing</p> <p>8 the treasury department, I believe you said you</p> <p>9 were responsible for overseeing the making of</p> <p>10 payments on leases, right?</p> <p>11 A. I have a team of analysts that put</p> <p>12 together all of the payments that are due every</p> <p>13 month for all of the aircraft leases, and every</p> <p>14 month they bring those payments through an</p> <p>15 approval process that I'm involved in reviewing</p> <p>16 and approving, and then a separate -- my</p> <p>17 treasury team then processes those payments.</p> <p>18 So my responsibility is making those</p> <p>19 payments in a timely manner, but I have</p> <p>20 infrastructure in place to make sure that the</p> <p>21 payments are done when they are required to be</p> <p>22 paid.</p> <p>23 Q. You mentioned your team.</p> <p>24 Who on your team had responsibility</p> <p>25 for leases relating to the AMCK leases that we</p>
<p style="text-align: right;">Page 11</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 exactly how it was determined which day it was</p> <p>3 each month.</p> <p>4 I assume that it was the same</p> <p>5 calendar day each month, but I'm not certain.</p> <p>6 Q. Did you understand whether there was</p> <p>7 any grace period associated with rent payments</p> <p>8 made after a due date?</p> <p>9 A. Yes.</p> <p>10 Q. And what was your understanding of</p> <p>11 any applicable grace periods under the Lease</p> <p>12 Agreements?</p> <p>13 A. Under the Lease Agreements, the</p> <p>14 grace period, after the due date, I believe is</p> <p>15 three days.</p> <p>16 Q. Sorry. You cut out a bit.</p> <p>17 Three days you said?</p> <p>18 A. Three days. And I would like to</p> <p>19 add, three business days.</p> <p>20 Q. Do you know when a payment would be</p> <p>21 due if a due date fell on a weekend?</p> <p>22 A. You would start -- I believe you</p> <p>23 would start counting from the first business</p> <p>24 day -- well, I'm not sure in this lease,</p> <p>25 frankly, if the -- if the way that it would be</p>	<p style="text-align: right;">Page 13</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 have been discussing?</p> <p>3 A. At the time, Sharath was the</p> <p>4 fleet -- I think he was a manager at the time</p> <p>5 or an analyst at the time. I'm not certain</p> <p>6 when he was promoted.</p> <p>7 Q. And what's Sharath's full name?</p> <p>8 A. Sashikumar Bindu.</p> <p>9 THE REPORTER: Can you spell that,</p> <p>10 please?</p> <p>11 THE WITNESS: S-A-S-H-I-K-U-M-A-R,</p> <p>12 and then another part of his name is</p> <p>13 Bindu, B-I-N-D-U. I hope he doesn't get</p> <p>14 mad at me for misspelling his name.</p> <p>15 Q. We won't tell him.</p> <p>16 And Mr. Bindu reported to you?</p> <p>17 A. No, he reports to Robert Fanning,</p> <p>18 and then Robert Fanning reported to me at the</p> <p>19 time.</p> <p>20 Q. When it came time to make payments</p> <p>21 of rent, how did Frontier know what days to</p> <p>22 make those payments on?</p> <p>23 A. We have a schedule that is kept</p> <p>24 after leases are entered into that records when</p> <p>25 payments are due and the amounts that are due.</p>

4 (Pages 10 - 13)

<p style="text-align: right;">Page 14</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. And who is responsible for keeping</p> <p>3 track of that schedule?</p> <p>4 A. Sharath.</p> <p>5 Q. Did you also receive invoices from</p> <p>6 lessors?</p> <p>7 A. I don't see the invoices from</p> <p>8 lessors. I believe lessors often send</p> <p>9 invoices, but we have a schedule to determine</p> <p>10 when payments are due regardless of the day</p> <p>11 they send them.</p> <p>12 Q. Is there anyone on your team who is</p> <p>13 responsible for receiving or monitoring</p> <p>14 invoices from lessors?</p> <p>15 A. Sharath.</p> <p>16 Q. Mr. Thwaytes, through the end of</p> <p>17 March 2020, to your knowledge, did Frontier</p> <p>18 make all rent payments that were due under the</p> <p>19 14 original leases?</p> <p>20 A. Through the end of March 2020 or the</p> <p>21 beginning of March of 2020?</p> <p>22 Q. Well, let me break that down.</p> <p>23 So prior to the beginning of</p> <p>24 March 2020, to your knowledge, had Frontier</p> <p>25 made all rent payments that were due under the</p>	<p style="text-align: right;">Page 16</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 discussions took place.</p> <p>3 Q. And were you personally involved in</p> <p>4 those discussions?</p> <p>5 A. I thought that your question was did</p> <p>6 I have any discussions with them.</p> <p>7 I am saying that I am not -- I don't</p> <p>8 remember if I had discussions with them in --</p> <p>9 if it was in late March or March or early</p> <p>10 April, and other people that work for me,</p> <p>11 Robert, for example, probably did have -- or</p> <p>12 did have discussions with AMCK in March of</p> <p>13 2020.</p> <p>14 I thought your question was asking</p> <p>15 me if I did.</p> <p>16 Q. Just to confirm, you don't recall</p> <p>17 personally having any discussions with AMCK in</p> <p>18 March 2020?</p> <p>19 A. Correct.</p> <p>20 Q. Do you recall personally having any</p> <p>21 discussions with AMCK about a rent deferral or</p> <p>22 grace period in April 2020?</p> <p>23 A. Yes. We did have discussions.</p> <p>24 Q. When were those discussions?</p> <p>25 A. I don't remember the dates.</p>
<p style="text-align: right;">Page 15</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 14 original leases?</p> <p>3 A. Yes, to my knowledge.</p> <p>4 Q. To your knowledge, did Frontier make</p> <p>5 all rent payments that were due on the 14</p> <p>6 original leases during the month of March 2020?</p> <p>7 A. To my knowledge, we made all of the</p> <p>8 payments that were due unless we were told by</p> <p>9 AMCK that we did not need to make the payments</p> <p>10 while we were discussing payment deferrals and</p> <p>11 other things.</p> <p>12 Q. Did you have any discussions with</p> <p>13 AMCK in March 2020 related to any payment</p> <p>14 deferrals?</p> <p>15 A. We had correspondence via e-mail and</p> <p>16 documents attached to e-mail. I don't recall</p> <p>17 if we had conversations in March 2020.</p> <p>18 Q. You mentioned e-mail and</p> <p>19 documentation.</p> <p>20 Did you have any oral discussions</p> <p>21 with anyone at AMCK during March 2020</p> <p>22 concerning any rent deferral?</p> <p>23 A. I don't know if the oral discussions</p> <p>24 that we had took place in March or early April.</p> <p>25 I don't recall the dates of when the</p>	<p style="text-align: right;">Page 17</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. And were those written e-mail</p> <p>3 discussions?</p> <p>4 A. There was e-mail correspondence and</p> <p>5 I believe phone conversations as well.</p> <p>6 Q. I appreciate that you don't recall</p> <p>7 the dates, but just to confirm, your testimony</p> <p>8 is you do recall having phone discussions in</p> <p>9 April 2020 with AMCK about rent grace periods?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Let's --</p> <p>12 MR. ALEXANDER: Gege, can we please</p> <p>13 put up Exhibit 1?</p> <p>14 MS. WANG: Can everybody see this?</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. HOSENPUD: Can you give me the</p> <p>17 Bates number?</p> <p>18 MR. ALEXANDER: Will do. This is a</p> <p>19 compilation of documents which we will</p> <p>20 send to you. It's got a series of Bates</p> <p>21 numbers starting with FRONTIER0002245.</p> <p>22 Gege, could you please send a copy</p> <p>23 of this to David when you have a chance?</p> <p>24 MS. WANG: Sure.</p> <p>25 (Thwaytes Exhibit 1, Compilation of</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Invoices, Bates Stamped FRONTIER0002245,</p> <p>3 marked for identification.)</p> <p>4 Q. Mr. Thwaytes, I would like to call</p> <p>5 your attention to the first page of this</p> <p>6 document.</p> <p>7 MR. ALEXANDER: And, Gege, maybe we</p> <p>8 could zoom out a bit so we can see more of</p> <p>9 it. There we go.</p> <p>10 Q. So, Mr. Thwaytes, this is an</p> <p>11 invoice, invoice date 07 Jan 2020. It relates</p> <p>12 to an aircraft Lease Agreement dated 5</p> <p>13 June 2018 in respect of Airbus A320-251N</p> <p>14 aircraft with MSN 8239.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. What does MSN mean?</p> <p>18 A. That's the manufacturer serial</p> <p>19 number for the aircraft.</p> <p>20 Q. Do you understand that MSN 8239 is</p> <p>21 an aircraft that Frontier leases under one of</p> <p>22 the 14 Lease Agreements we discussed earlier?</p> <p>23 A. I don't remember all of the MSNs</p> <p>24 with all of the lessors. So I don't know that</p> <p>25 besides looking at it on this page.</p>	<p style="text-align: right;">Page 20</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. Is MSN 8102 an aircraft leased by</p> <p>4 Frontier from AMCK or affiliated entities?</p> <p>5 A. According to this document. But</p> <p>6 like I said previously, I don't recall all of</p> <p>7 the MSNs for all of the aircraft and what</p> <p>8 lessors they are all associated with.</p> <p>9 Q. Do you have any reason to believe</p> <p>10 that MSN 8102 is not an aircraft leased from</p> <p>11 AMCK?</p> <p>12 A. I don't have any reason to believe</p> <p>13 that.</p> <p>14 Q. The invoice describes a payment due</p> <p>15 date of April 6, 2020, and a total amount due</p> <p>16 of \$354,139.30.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Do you have any reason to believe</p> <p>20 that information is inaccurate?</p> <p>21 A. I don't have any reason to believe</p> <p>22 that.</p> <p>23 Q. Let's go to the next page. This is</p> <p>24 an invoice dated January 7, 2020, and it</p> <p>25 concerns an aircraft Lease Agreement dated 9</p>
<p style="text-align: right;">Page 19</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. The invoice describes a payment date</p> <p>3 of April 3, 2020.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And it describes the amount due in</p> <p>7 this invoice as \$342,532.39.</p> <p>8 Do you see that?</p> <p>9 A. I see that.</p> <p>10 Q. Do you have any reason to believe</p> <p>11 that this information is inaccurate?</p> <p>12 A. I don't have any reason to believe</p> <p>13 that.</p> <p>14 Q. Is this the sort of invoice that the</p> <p>15 treasury department maintained?</p> <p>16 A. These are the invoices that are sent</p> <p>17 to our fleet analyst from lessors. It's like a</p> <p>18 relatively standard form.</p> <p>19 Q. Could we please look at the next</p> <p>20 page? And you will see this is another</p> <p>21 invoice. This one dated January 7, 2020.</p> <p>22 It describes an aircraft Lease</p> <p>23 Agreement dated 6 March 2018 in respect of one</p> <p>24 Airbus A320-251N aircraft with MSN 8102.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 21</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 May 2019 in respect of one Airbus A320-251N</p> <p>3 aircraft with MSN 8913.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Is MSN 8913 an aircraft that</p> <p>7 Frontier leases from AMCK or affiliated</p> <p>8 entities?</p> <p>9 A. I don't recall which MSN is</p> <p>10 associated with which lessor, but based off of</p> <p>11 what I'm seeing in this invoice, it appears to</p> <p>12 be.</p> <p>13 Q. The invoice describes a payment due</p> <p>14 date of April 9, 2020, and a total amount due</p> <p>15 of \$344,568.92.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Do you have any reason to believe</p> <p>19 that information is inaccurate?</p> <p>20 A. No.</p> <p>21 Q. Let's go to the next page.</p> <p>22 Mr. Thwaytes, this is an invoice</p> <p>23 dated November 12, 2019, with a payment due</p> <p>24 date of April 17, 2020, and it relates to</p> <p>25 aircraft operating Lease Agreement dated as of</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 June 9, 2014, in respect of one Airbus A320-200</p> <p>3 aircraft with MSN 06184.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And the total amount due on</p> <p>7 April 17, 2020, was \$343,186.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you have any reason to believe</p> <p>11 that information is inaccurate?</p> <p>12 A. I don't, except it seems odd the</p> <p>13 invoice date is in November of 2019 and the</p> <p>14 payment due date is in April of 2020. I notice</p> <p>15 that, but it just seems odd.</p> <p>16 Q. Do you have an understanding of when</p> <p>17 invoices typically would be sent in connection</p> <p>18 with the Lease Agreements?</p> <p>19 A. Based on the previous invoices you</p> <p>20 just showed me, there were invoices that were</p> <p>21 sent in 2020, for payments due in 2020. So</p> <p>22 this has an invoice date of 2019 and a payment</p> <p>23 date in 2020. So it just seems odd.</p> <p>24 (Reporter Clarification.)</p> <p>25 A. The previous invoices you showed me</p>	<p style="text-align: right;">Page 24</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. Mr. Thwaytes, we have just looked at</p> <p>3 a number of invoices that described payment due</p> <p>4 dates of April 3, 2020, April 6, 2020, April 9,</p> <p>5 2020, April 17, 2020, and then finally again on</p> <p>6 April 17, 2020.</p> <p>7 Do you know if Frontier paid any of</p> <p>8 these invoices on those due dates described</p> <p>9 therein?</p> <p>10 A. I believe Frontier did not pay these</p> <p>11 invoices on these -- on the due dates described</p> <p>12 herein because of conversations and</p> <p>13 interactions with AMCK that led us to believe</p> <p>14 that we did not need to make these payments on</p> <p>15 these due dates.</p> <p>16 Q. But just to confirm, whatever the</p> <p>17 reason, Frontier did not make payment on those</p> <p>18 dates, right?</p> <p>19 A. Correct.</p> <p>20 Q. I'm not asking you to calculate, but</p> <p>21 it looks roughly like \$1.7 million on those</p> <p>22 first five invoices we looked at. I don't know</p> <p>23 if you were able to get a sense, but does that</p> <p>24 sound correct to you?</p> <p>25 A. Five invoices, 300 grand, 1.5 plus</p>
<p style="text-align: right;">Page 23</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 were all -- all had an invoice date of Jan 2020</p> <p>3 or more recent with payment dates in</p> <p>4 April 2020, and this is -- this invoice has an</p> <p>5 invoice date of November 2019.</p> <p>6 So it just comes off as odd that the</p> <p>7 invoice date is so far in advance of the</p> <p>8 payment due date, but I don't have any -- I</p> <p>9 don't know why or have any feedback that it's</p> <p>10 incorrect. It just looks odd.</p> <p>11 Q. Let's go to the next page.</p> <p>12 This is an invoice dated January 7,</p> <p>13 2020. It relates to an aircraft Lease</p> <p>14 Agreement dated 19 August 2019 in respect of</p> <p>15 one Airbus A320-251N aircraft with MSN 9068.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. And it describes a payment due date</p> <p>19 of 17 April 2020 and a total amount due of</p> <p>20 \$323,126.20.</p> <p>21 Did I read that correctly?</p> <p>22 A. You did.</p> <p>23 Q. Do you have any reason to believe</p> <p>24 that information is inaccurate?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 25</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 some change. You can get to 1.6, 1.7, just</p> <p>3 doing rough math.</p> <p>4 Q. Can we go to the next page, please?</p> <p>5 This is an invoice dated</p> <p>6 November 25, 2019, with a payment due date of</p> <p>7 April 22, 2020. It relates to aircraft Lease</p> <p>8 Agreement dated 22 March 2019 in respect of one</p> <p>9 Airbus A320-251N aircraft with MSN 8766.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. And it describes a payment due on</p> <p>13 April 22, 2020, of \$347,864.42.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Do you have any reason to believe</p> <p>17 that information is inaccurate?</p> <p>18 A. No. But, again, the invoice date</p> <p>19 and the payment date are pretty spread out,</p> <p>20 which just comes off as odd, but I don't know</p> <p>21 why off the top.</p> <p>22 Q. Let's look at the next page.</p> <p>23 This is an invoice dated January 7,</p> <p>24 2020. It's a payment due date of April 23,</p> <p>25 2020. It concerns aircraft Lease Agreement</p>

7 (Pages 22 - 25)

<p style="text-align: right;">Page 26</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 dated 23 April 2019 in respect of one Airbus</p> <p>3 A320-251N aircraft with MSN 8857.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And it describes a total amount due</p> <p>7 on April 23, 2020, of \$347,600.78.</p> <p>8 Did I read that correctly?</p> <p>9 A. You did.</p> <p>10 Q. Do you have any reason to believe</p> <p>11 that information is inaccurate?</p> <p>12 A. I don't.</p> <p>13 Q. Let's look at the next page.</p> <p>14 This is an invoice dated March 19,</p> <p>15 2020. It concerns aircraft operating Lease</p> <p>16 Agreement dated as of February 19, 2016, in</p> <p>17 respect of one Airbus A321-200 aircraft with</p> <p>18 MSN 7524.</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. This invoice and all the prior ones</p> <p>22 appear to be from Accipiter Investments</p> <p>23 Aircraft 4 Limited.</p> <p>24 Do you see that?</p> <p>25 A. It appears that way in the account</p>	<p style="text-align: right;">Page 28</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 This is an invoice dated 25</p> <p>3 November 2019. It concerns aircraft Lease</p> <p>4 Agreement dated 27 June 2019 in respect of one</p> <p>5 Airbus A320-251N aircraft with MSN 8977.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. It describes a payment due date of</p> <p>9 April 27, 2020, in the amount of \$331,694.50.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any reason to believe</p> <p>13 that information is inaccurate?</p> <p>14 A. No, except for the odd gap between</p> <p>15 the invoice date and the payment due date</p> <p>16 again.</p> <p>17 Q. Let's look at the next page.</p> <p>18 This is an invoice dated</p> <p>19 November 25, 2019. It concerns aircraft Lease</p> <p>20 Agreement dated 28 June 2019 in respect of one</p> <p>21 Airbus A320-251N aircraft with MSN 9026.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. It describes a payment due date of</p> <p>25 April 28, 2020, and a total amount due of</p>
<p style="text-align: right;">Page 27</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 name.</p> <p>3 Q. Do you know who Accipiter</p> <p>4 Investments Aircraft 4 Limited is?</p> <p>5 A. I don't know specifically who it is,</p> <p>6 but I assume that it is a entity that is part</p> <p>7 of AMCK's corporate structure that is the</p> <p>8 lessor for these aircraft.</p> <p>9 Q. Does Frontier have any business with</p> <p>10 Accipiter Investments Aircraft 4 Limited?</p> <p>11 A. It appears that we do, based off of</p> <p>12 this invoice naming them as -- as the account</p> <p>13 name for a payment that is due to -- for one of</p> <p>14 the aircraft that, per this invoice, is leased</p> <p>15 to Frontier from AMCK.</p> <p>16 Q. And this invoice concerning MSN 7524</p> <p>17 describes a payment due on April 24, 2020, of</p> <p>18 \$362,630.80.</p> <p>19 Did I read that correctly?</p> <p>20 A. You did.</p> <p>21 Q. Do you have any reason to believe</p> <p>22 that information is inaccurate?</p> <p>23 A. I don't have any reason to believe</p> <p>24 that.</p> <p>25 Q. Let's turn to the next page.</p>	<p style="text-align: right;">Page 29</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 \$332,243.75.</p> <p>3 Did I read that correctly?</p> <p>4 A. You did.</p> <p>5 Q. Do you have any reason to believe</p> <p>6 that information is inaccurate?</p> <p>7 A. No, except, again, for the odd gap</p> <p>8 between the invoice date and the payment date.</p> <p>9 Q. And as you testified earlier, that's</p> <p>10 just -- you're noticing the dates. You don't,</p> <p>11 yourself, have an understanding of when</p> <p>12 invoices were sent, correct?</p> <p>13 A. I don't receive the invoices. They</p> <p>14 are received by -- by people on the fleet team.</p> <p>15 I would just look at an invoice like this and</p> <p>16 question why the invoice date is in</p> <p>17 November 2019, almost six months prior to when</p> <p>18 the payment due date is and wonder why.</p> <p>19 And you're asking me if all of this</p> <p>20 is accurate to the best of my knowledge by</p> <p>21 looking at this, and it appears so, but I would</p> <p>22 question why there is such a gap in the invoice</p> <p>23 date and the payment date naturally, as I</p> <p>24 review things like this.</p> <p>25 But I don't know why there is that</p>

8 (Pages 26 - 29)

<p style="text-align: right;">Page 30</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 gap, and I don't know if there is an issue with</p> <p>3 that gap.</p> <p>4 Q. Let's go to the next page, please.</p> <p>5 This is an invoice dated</p> <p>6 November 25, 2019. It concerns aircraft Lease</p> <p>7 Agreement dated 29 August 2018 in respect of</p> <p>8 one Airbus A320-251N aircraft with MSN 8307.</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. It describes a payment due date of</p> <p>12 April 29, 2020, and a total amount due of</p> <p>13 \$342,554.02.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. And do you have any reason to</p> <p>17 believe that information is inaccurate other</p> <p>18 than the invoice date that you've mentioned</p> <p>19 before?</p> <p>20 A. Other than the gap between the</p> <p>21 invoice date and the payment date, looking at</p> <p>22 it quickly, I don't see anything that would</p> <p>23 appear to be inaccurate.</p> <p>24 Q. Let's go to the next page, which is</p> <p>25 an invoice dated November 12, 2019. It</p>	<p style="text-align: right;">Page 32</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Agreement dated 31 July 2018 in respect of one</p> <p>3 Airbus A320-251N aircraft with MSN 8357.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. It describes a payment due date of</p> <p>7 April 30, 2020, and a total amount due of</p> <p>8 \$345,236.14.</p> <p>9 Did I read that right?</p> <p>10 A. You did.</p> <p>11 Q. Do you have any reason to believe</p> <p>12 that information is inaccurate?</p> <p>13 A. No, other than the odd gap between</p> <p>14 the invoice date and the payment date.</p> <p>15 Q. Let's go to the next page.</p> <p>16 This is an invoice dated 25</p> <p>17 November 2019. It concerns aircraft Lease</p> <p>18 Agreement dated 30 August 2018 in respect of</p> <p>19 one Airbus A320-251N aircraft with MSN 8402.</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. It describes a payment due date of</p> <p>23 April 30, 2020, and a total amount due of</p> <p>24 \$343,181.29.</p> <p>25 Do you see that?</p>
<p style="text-align: right;">Page 31</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 concerns aircraft Lease Agreement dated 30</p> <p>3 September 2019 in respect of one Airbus</p> <p>4 A320-251N aircraft with MSN 9177.</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Do you know if MSN 9177 is an</p> <p>8 aircraft that Frontier leases from AMCK or</p> <p>9 affiliated entities?</p> <p>10 A. I don't know off the top, as I don't</p> <p>11 know which MSN is associated with each lessor,</p> <p>12 but according to this invoice that I'm looking</p> <p>13 at, it appears to be associated with AMCK.</p> <p>14 Q. The invoice describes a payment due</p> <p>15 date of April 30, 2020, and a total due of</p> <p>16 \$326,641.40.</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Do you have any reason to believe</p> <p>20 that information is inaccurate?</p> <p>21 A. No, other than the odd gap between</p> <p>22 the invoice date and the payment due date.</p> <p>23 Q. Let's go to the next page.</p> <p>24 This is an invoice dated</p> <p>25 November 25, 2019. It concerns aircraft Lease</p>	<p style="text-align: right;">Page 33</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. Do you have any reason to believe</p> <p>4 that information is inaccurate?</p> <p>5 A. I don't, except for the odd gap</p> <p>6 between the invoice date and the payment due</p> <p>7 date.</p> <p>8 Q. Let's go to the next page.</p> <p>9 This is an invoice dated January 7,</p> <p>10 2020. It concerns aircraft Lease Agreement</p> <p>11 dated 5 June 2018 in respect of Airbus</p> <p>12 A320-251N aircraft with MSN 8239.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. And it describes a payment due date</p> <p>16 of May 5, 2020, and a total amount due of</p> <p>17 \$342,532.39.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Do you have any reason to believe</p> <p>21 that information is inaccurate?</p> <p>22 A. I don't, except for the almost five</p> <p>23 month gap between the invoice date and the</p> <p>24 payment due date.</p> <p>25 Q. Let's go to the next page.</p>

Page 34

1 THWAYTES - CONFIDENTIAL

2 This is an invoice dated January 7,

3 2020. It concerns aircraft Lease Agreement

4 dated 6 March 2018 in respect of one Airbus

5 A320-251N aircraft with MSN 8102.

6 Do you see that?

7 A. I do.

8 Q. And it describes a payment due date

9 of May 6, 2020, and a total amount due of

10 \$354,139.30.

11 Do you see that?

12 A. I do.

13 Q. Do you have any reason to believe

14 that information is inaccurate?

15 A. I don't.

16 Q. Let's go to the next page.

17 This is an invoice dated January 7,

18 2020, concerning aircraft Lease Agreement dated

19 9 May 2019 in respect of one Airbus A320-251N

20 aircraft with MSN 8913.

21 Do you see that?

22 A. I do.

23 Q. And this describes a payment due

24 date of May 8, 2020, and a total amount due of

25 \$344,568.92.

Page 35

1 THWAYTES - CONFIDENTIAL

2 Do you see that?

3 A. I do.

4 Q. Do you have any reason to believe

5 that information is inaccurate?

6 A. No, except for the gap between the

7 invoice date and the payment due date again.

8 Q. Mr. Thwaytes, what we have been

9 looking at is a collection of invoices with

10 different payment due dates. The very first

11 invoice we looked at had a payment due date of

12 April 3, 2020, and the most recent invoice, at

13 the end of the document that we looked at, had

14 a payment due date of May 8, 2020.

15 Do you know or did you have a chance

16 to get a sense of the total amount of invoice

17 amounts involved?

18 A. I didn't. I wasn't calculating the

19 amounts while we were going through them, but

20 it looks like they are averaging around 340,000

21 per invoice. And I didn't count how many we

22 just went through, but you could do the math to

23 get an idea. Somewhere in the three and a

24 half, \$4 million range it seems.

25 Q. To your knowledge, did Frontier pay

Page 36

1 THWAYTES - CONFIDENTIAL

2 any of these invoices during the month of

3 April 2020?

4 A. No, to my knowledge, we didn't.

5 Q. To your knowledge, did Frontier pay

6 any --

7 A. Actually, we may have paid one of

8 the invoices. There was one aircraft where

9 Accipiter or AMCK had asked us to continue to

10 be current on, and we made the payment on the

11 due date for that aircraft.

12 Q. And do you know what the MSN for

13 that aircraft was?

14 A. I don't off the top, no.

15 Q. Do you know if that aircraft related

16 to one of the 14 original leases we have been

17 discussing or a newer aircraft delivered under

18 the Framework Agreement?

19 A. I'm trying to recall if it was one

20 of the 14 that was in the process of being

21 novated or if it was the first aircraft

22 delivered under the Framework Agreement, and I

23 don't recall which aircraft it was. I just

24 recall that there was one aircraft that AMCK

25 requested that we pay on the due date and we

Page 37

1 THWAYTES - CONFIDENTIAL

2 did.

3 Q. And you don't know whether the

4 aircraft you are thinking of is one of the

5 aircraft numbers that we just looked at, right?

6 A. I don't.

7 Q. Other than that one aircraft that

8 you are thinking of, did Frontier pay invoices

9 for any other leases to AMCK during the month

10 of April 2020?

11 A. I don't believe so.

12 MR. ALEXANDER: Let's put up, as

13 Exhibit 2, FRONTIER00328.

14 (Thwaytes Exhibit 2, E-Mail, Bates

15 Stamped FRONTIER0002245 through 332,

16 marked for identification.)

17 Q. Mr. Thwaytes, this is an e-mail

18 dated May 8, 2020, from Paul Sheridan to you,

19 Howard Diamond and others.

20 Do you see that?

21 A. I do.

22 Q. And in the e-mail, Mr. Sheridan

23 says, "Dear Spencer and Howard, please find

24 attached notice for your attention."

25 Did I read that correctly?

<p style="text-align: right;">Page 38</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 A. You did.</p> <p>3 Q. Let's look at the next page of the</p> <p>4 document, which describes itself as a Notice of</p> <p>5 Termination dated May 8, 2020.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Do you recall receiving this</p> <p>9 document?</p> <p>10 A. I do.</p> <p>11 Q. Do you see in the second paragraph</p> <p>12 the notice states, "Frontier has failed to make</p> <p>13 payment of basic rent when due under various</p> <p>14 Other Agreements (as defined in the MSN 10038</p> <p>15 Lease Agreement), and the grace periods for</p> <p>16 payment of such amounts has expired under the</p> <p>17 terms of such agreements."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. It goes on to state "Details of the</p> <p>21 past due amounts are set forth in the schedule</p> <p>22 to this notice."</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. Let's go to the last page of this</p>	<p style="text-align: right;">Page 40</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. Have you ever checked any of the</p> <p>4 information in this schedule to see whether it</p> <p>5 was accurate?</p> <p>6 A. I personally have not checked this</p> <p>7 information to make sure that it was accurate.</p> <p>8 Q. Have you asked anyone at Frontier to</p> <p>9 do any kind of check like that?</p> <p>10 A. When I received this documentation,</p> <p>11 I forwarded it to counsel and then proceeded to</p> <p>12 discuss this document with counsel.</p> <p>13 Q. Without getting into your</p> <p>14 discussions with counsel, has anyone at</p> <p>15 Frontier, to your knowledge, ever checked any</p> <p>16 of the information in this Schedule 1 for</p> <p>17 accuracy?</p> <p>18 A. The discussions around this document</p> <p>19 were with counsel.</p> <p>20 Q. Do you have any reason to believe</p> <p>21 that any of the information describing invoices</p> <p>22 and payment amounts and payment due dates is</p> <p>23 inaccurate?</p> <p>24 A. I don't have any reason to believe</p> <p>25 that it's inaccurate.</p>
<p style="text-align: right;">Page 39</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 document, which is Bates number page</p> <p>3 FRONTIER00332. This is Schedule 1, payment</p> <p>4 delinquencies.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And it's a list of various MSN.</p> <p>8 Do you understand those to be MSN</p> <p>9 that Frontier leases from AMCK?</p> <p>10 A. I don't have the ability to</p> <p>11 cross-check them at the moment, so I can't</p> <p>12 confirm that.</p> <p>13 Q. You said you recalled receiving this</p> <p>14 notice.</p> <p>15 Have you ever gone back and checked</p> <p>16 whether any of these MSNs are not leased by</p> <p>17 Frontier?</p> <p>18 A. I have never personally went and</p> <p>19 cross-checked whether these MSNs were not</p> <p>20 leased by -- from AMCK or Accipiter.</p> <p>21 Q. These -- each row of this chart in</p> <p>22 Schedule 1 identifies an MSN, a payment type,</p> <p>23 an invoice reference, a due amount in US</p> <p>24 dollars and a due date.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 41</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 MR. ALEXANDER: Let's look at</p> <p>3 Exhibit 3, FRONTIER8058.</p> <p>4 (Thwaytes Exhibit 3, E-Mail Chain,</p> <p>5 Bates Stamped FRONTIER0008058 through</p> <p>6 8059, marked for identification.)</p> <p>7 Q. Let's look at the very top of this</p> <p>8 document.</p> <p>9 Mr. Thwaytes, this is a Wednesday,</p> <p>10 May 13 e-mail from Erik Hauglid, H-A-U-G-L-I-D,</p> <p>11 to Mr. Bindu and you and others.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Who is Eric Hauglid?</p> <p>15 A. He's a director on my treasury team</p> <p>16 that works for me.</p> <p>17 Q. And if you look down on the</p> <p>18 document, you will see that there is a series</p> <p>19 of e-mails on May 13, including at the bottom</p> <p>20 of the page an e-mail from Mr. Sashikumar Bindu</p> <p>21 on May 13 to Jimmy Dempsey, you and others.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. The e-mail says, "Hi Jimmy, please</p> <p>25 approve the following payments to AMCK in light</p>

11 (Pages 38 - 41)

<p style="text-align: right;">Page 42</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 of recent discussions with them. 14 payments</p> <p>3 are from April and 3 from May thus far."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. So that's a total of 17 payments</p> <p>7 that Mr. Bindu is describing here, right?</p> <p>8 A. If you scroll up, 1 through 8, 9</p> <p>9 through 17. Looks like 17 payments.</p> <p>10 Q. And do you understand those payments</p> <p>11 to relate to the 14 original leases for the due</p> <p>12 dates of payments in April and the due date of</p> <p>13 payments in May prior to this e-mail?</p> <p>14 A. It would be helpful if I could</p> <p>15 review to see if any of the aircraft or MSNs</p> <p>16 are repeated to see if -- it's difficult to do</p> <p>17 in this document, but...</p> <p>18 Q. Take your time. We can pause and go</p> <p>19 as slowly as you like.</p> <p>20 A. So zoom out if you could. I just</p> <p>21 don't have scratch paper or anything with me,</p> <p>22 but -- out if you could, so I could see it all</p> <p>23 at the same time.</p> <p>24 MS. WANG: I see. I'm sorry. So</p> <p>25 zoom out a little further like this?</p>	<p style="text-align: right;">Page 44</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 into a new topic, David. We can take a</p> <p>3 break now, or, Mr. Thwaytes, whatever your</p> <p>4 preference is.</p> <p>5 MR. HOSENPUD: Yes, I agree let's</p> <p>6 take a break. Thank you.</p> <p>7 (Recess taken.)</p> <p>8 BY MR. ALEXANDER:</p> <p>9 Q. Mr. Thwaytes, we have been talking</p> <p>10 about the 14 original leases that Frontier had</p> <p>11 for Airbus A320 aircraft with AMCK or its</p> <p>12 affiliates before entering the Framework</p> <p>13 Agreement with AMCK in March 2020.</p> <p>14 Do you understand that Frontier</p> <p>15 began leasing an additional aircraft from AMCK</p> <p>16 in March 2020?</p> <p>17 A. Yes.</p> <p>18 Q. Was that MSN 10038 or do you know?</p> <p>19 A. I don't recall the MSN.</p> <p>20 Q. But the new aircraft that Frontier</p> <p>21 began leasing in March 2020, that was pursuant</p> <p>22 to the Framework Agreement, to your</p> <p>23 understanding?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know when that aircraft was</p>
<p style="text-align: right;">Page 43</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 THE WITNESS: There you go.</p> <p>3 A. (Document review.)</p> <p>4 It looks like there's two payments</p> <p>5 for each of three aircraft. So what you're</p> <p>6 describing seems accurate.</p> <p>7 Q. Do you know if, in fact, these</p> <p>8 payments were ever paid to AMCK?</p> <p>9 A. Yes, I know that the wires were</p> <p>10 released from Frontier through our bank</p> <p>11 account, and so I am aware that the payments</p> <p>12 were made.</p> <p>13 Q. Do you know when the payments were</p> <p>14 made?</p> <p>15 A. On May 13, I believe is the date.</p> <p>16 Q. Do you know when AMCK received that</p> <p>17 payment?</p> <p>18 A. I don't have access to AMCK's bank</p> <p>19 accounts, so I don't know when they received</p> <p>20 the payment, but I know the standard process</p> <p>21 for wire payments being sent and the funds are</p> <p>22 very close to immediate. There is a latency in</p> <p>23 between, but I don't know when they received</p> <p>24 them. But they are paid by wire.</p> <p>25 MR. ALEXANDER: I'm going to head</p>	<p style="text-align: right;">Page 45</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 delivered?</p> <p>3 A. I don't remember the delivery date.</p> <p>4 MR. ALEXANDER: Gege, can you please</p> <p>5 put up FRONTIER0238, and we will make that</p> <p>6 Exhibit 4.</p> <p>7 (Thwaytes Exhibit 4, E-Mail Chain,</p> <p>8 Bates Stamped FRONTIER0000238 through 239,</p> <p>9 marked for identification.)</p> <p>10 Q. Mr. Thwaytes, this is a March 16,</p> <p>11 2020, e-mail from you to Jane O'Callaghan and</p> <p>12 others.</p> <p>13 Do you see that?</p> <p>14 A. Yep.</p> <p>15 Q. And if you look down at the second</p> <p>16 e-mail on the page, this is an e-mail from Jane</p> <p>17 O'Callaghan to you and others on March 16,</p> <p>18 Monday, at 6:59 a.m.</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. And she says, the subject, "Delivery</p> <p>22 of MSN 10038." And Ms. O'Callaghan states,</p> <p>23 "Congratulations to the Frontier team on the</p> <p>24 successful delivery and sale/leaseback to AMCK</p> <p>25 of MSN 10038 a short while ago. Great teamwork</p>

<p style="text-align: right;">Page 46</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 across the board over the last three days."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Does that refresh your recollection</p> <p>6 as to when the new aircraft in March 2020 was</p> <p>7 delivered?</p> <p>8 A. Yeah, I recall it was sometime in</p> <p>9 the middle of March 2020. So it says March 16.</p> <p>10 That makes sense.</p> <p>11 Q. And you reply in your e-mail shortly</p> <p>12 thereafter at 7:18 a.m. to say, "Thank you,</p> <p>13 Jane and team." Is that right?</p> <p>14 A. Yep.</p> <p>15 Q. So do you have any reason to believe</p> <p>16 this is wrong, this information?</p> <p>17 A. No.</p> <p>18 Q. So is it fair to say that the</p> <p>19 aircraft delivered in mid March 2020 was</p> <p>20 delivered in the morning of March 16?</p> <p>21 A. I don't know if the transfer of</p> <p>22 title took place in the morning of March 16 or</p> <p>23 if it took place at the Airbus facility on</p> <p>24 March 15 and received an e-mail on March 16.</p> <p>25 So I'm not certain of those dates.</p>	<p style="text-align: right;">Page 48</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 MR. ALEXANDER: Yes, this is the</p> <p>3 Framework Agreement.</p> <p>4 (Thwaytes Exhibit 5, Framework</p> <p>5 Agreement, Bates Stamped AMCK000001</p> <p>6 through 53, marked for identification.)</p> <p>7 Q. Mr. Thwaytes, the document that you</p> <p>8 can see on screen is a Framework Agreement</p> <p>9 relating to the purchase and leaseback of six</p> <p>10 new Airbus model A320-251N aircraft, and it's</p> <p>11 between AMCK Aviation Holdings Ireland Limited</p> <p>12 and Frontier Airlines, Inc.</p> <p>13 Do you see that?</p> <p>14 A. I see that.</p> <p>15 Q. Have you ever seen this document</p> <p>16 before?</p> <p>17 A. I have.</p> <p>18 Q. And do you understand this is the</p> <p>19 Framework Agreement that we have been</p> <p>20 discussing today?</p> <p>21 A. Based off of the front page that</p> <p>22 you're showing me, it is.</p> <p>23 Q. Let's please turn to AMCK0040.</p> <p>24 This is Schedule 1 to the Framework</p> <p>25 Agreement. It lists six aircraft with six</p>
<p style="text-align: right;">Page 47</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 I'm assuming the same or pretty close together.</p> <p>3 I just don't recall the exact date that the</p> <p>4 aircraft transferred title.</p> <p>5 Q. Do you understand that this aircraft</p> <p>6 that was delivered was the first aircraft</p> <p>7 delivered pursuant to the Framework Agreement?</p> <p>8 A. Yep.</p> <p>9 Q. Do you know what the schedule of</p> <p>10 delivery was from the remaining aircraft under</p> <p>11 the Framework Agreement?</p> <p>12 A. I know the delivery dates for those</p> <p>13 aircraft changed as we went through that period</p> <p>14 of time. So I have a lot of months in my head.</p> <p>15 So I don't recall the original</p> <p>16 delivery months for those aircraft. And then</p> <p>17 I -- so I don't recall the original delivery</p> <p>18 months for those aircraft, if that's what your</p> <p>19 question is asking, and the original or the</p> <p>20 delivery dates were unknown at this time, the</p> <p>21 actual dates because they were in the future.</p> <p>22 MR. ALEXANDER: Gege, could we</p> <p>23 please put up AMCK0040, and we will make</p> <p>24 this Exhibit 5.</p> <p>25 MS. WANG: 0040?</p>	<p style="text-align: right;">Page 49</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 scheduled delivery quarter or scheduled</p> <p>3 delivery months.</p> <p>4 Do you see that?</p> <p>5 A. I see that.</p> <p>6 Q. The aircraft number 1, which is not</p> <p>7 identified, has a scheduled delivery quarter or</p> <p>8 month of March 2020.</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Aircraft number 2, which is not</p> <p>12 identified, has a scheduled delivery quarter or</p> <p>13 delivery month of March 2020.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Aircraft number 3, which is not</p> <p>17 identified, also lists March 2020 as the</p> <p>18 scheduled delivery quarter or month.</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Aircraft number 4 is not identified</p> <p>22 but has a scheduled delivery quarter or month</p> <p>23 of May 2020.</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>

<p style="text-align: right;">Page 50</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. Aircraft number 5, not identified,</p> <p>3 has a scheduled delivery quarter or month of</p> <p>4 June 2020.</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Aircraft number 6, not identified,</p> <p>8 has a scheduled delivery quarter or delivery</p> <p>9 month of August 2020.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Does that refresh your recollection</p> <p>13 as to the original schedule for the six</p> <p>14 aircraft covered by the Framework Agreement?</p> <p>15 A. Yes, I -- we take delivery of 15, 20</p> <p>16 aircraft a year, so I don't recall the months</p> <p>17 and quarters for each aircraft going back</p> <p>18 numbers of years, but this refreshes my memory.</p> <p>19 Q. Let's take a step back generally and</p> <p>20 just talk through the basic mechanics of the</p> <p>21 purchase and sale of this aircraft MSN 10038 or</p> <p>22 any of the aircraft in a sale-leaseback</p> <p>23 transaction.</p> <p>24 So correct me if I'm wrong, but</p> <p>25 Frontier has a Purchase Agreement with Airbus,</p>	<p style="text-align: right;">Page 52</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. More than 30?</p> <p>3 A. Yes.</p> <p>4 Q. More than 50?</p> <p>5 A. Yes.</p> <p>6 Q. More than 100?</p> <p>7 A. Yes.</p> <p>8 Q. More than 150?</p> <p>9 A. At that time, yes, more than 150.</p> <p>10 Q. More than 200?</p> <p>11 A. I don't believe so at that time, but</p> <p>12 I could be wrong. There are two order books</p> <p>13 that were under the Purchase Agreement at that</p> <p>14 time, and I don't recall how many of the first</p> <p>15 order book had been delivered by that point in</p> <p>16 time, so...</p> <p>17 MR. HOSENPUD: Okay. I'm going to</p> <p>18 designate this testimony as confidential</p> <p>19 subject to the protective order.</p> <p>20 Q. So just to sum up, if I have it</p> <p>21 right, Mr. Thwaytes, as of early 2020, Frontier</p> <p>22 had somewhere between 150 and 200 aircraft to</p> <p>23 purchase under the Airbus Purchase Agreement;</p> <p>24 is that right?</p> <p>25 A. That's right.</p>
<p style="text-align: right;">Page 51</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 right?</p> <p>3 A. Correct.</p> <p>4 Q. And under that Purchase Agreement,</p> <p>5 Frontier was required to purchase aircraft at</p> <p>6 various times from Airbus; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. How many aircraft are covered by the</p> <p>9 Airbus Purchase Agreement?</p> <p>10 A. It varies depending on how many</p> <p>11 aircraft -- at what point in time we are</p> <p>12 talking, as we are taking delivery of aircraft</p> <p>13 throughout every year and ordering additional</p> <p>14 aircraft at different points in time. So the</p> <p>15 number varies.</p> <p>16 Q. As of the beginning of 2020, how</p> <p>17 many aircraft remained to be purchased by</p> <p>18 Frontier under the Airbus Purchase Agreement?</p> <p>19 A. I don't recall the exact number at</p> <p>20 the beginning of 2020. I haven't looked at</p> <p>21 that to prepare for that question.</p> <p>22 Q. Is it more than ten?</p> <p>23 A. Yes.</p> <p>24 Q. More than 20?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 53</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. Not all of those aircraft related to</p> <p>3 aircraft covered by the Framework Agreement,</p> <p>4 correct?</p> <p>5 A. You stated the Framework Agreement</p> <p>6 covered six aircraft. So, obviously, it</p> <p>7 doesn't cover all of those aircraft.</p> <p>8 Q. Did Frontier have other sale and</p> <p>9 leaseback counterparties in early 2020?</p> <p>10 A. We had sale and leaseback</p> <p>11 counterparties from aircraft that had delivered</p> <p>12 prior to that period of time, and we had sale</p> <p>13 and leaseback counterparties for aircraft that</p> <p>14 were going to deliver post that period of time</p> <p>15 at that point in time.</p> <p>16 Q. When you say post that period of</p> <p>17 time, what time period are you referring to</p> <p>18 there?</p> <p>19 A. Going forward, AMCK wasn't the only</p> <p>20 lessor that we had sale and leaseback</p> <p>21 agreements in place with for future delivery.</p> <p>22 Q. Did you have any scheduled</p> <p>23 deliveries relating to sale and leaseback</p> <p>24 transactions in 2020 other than with AMCK?</p> <p>25 A. Before -- I think originally we did,</p>

<p style="text-align: right;">Page 62</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. And then the lessor would pay some</p> <p>3 amount to Airbus?</p> <p>4 A. It's like closing a loan where it</p> <p>5 all goes into title and then everybody releases</p> <p>6 the payments that they need to and releases the</p> <p>7 assets, and the lease is in force and the</p> <p>8 aircraft is owned by AMCK and the owner</p> <p>9 trustee. So generally, yes.</p> <p>10 Q. And if there was a difference</p> <p>11 between the amount of money Frontier was</p> <p>12 required to pay Airbus and the amount of money</p> <p>13 that a sale and leaseback counterparty agreed</p> <p>14 to pay, then Frontier was allowed to keep that</p> <p>15 difference; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. So assuming that MSN 10038 was</p> <p>18 delivered in March 2020, then Frontier was able</p> <p>19 to book a profit of approximately \$4 million on</p> <p>20 that transaction; is that right?</p> <p>21 MR. HOSENPUD: Object to the form of</p> <p>22 the question. Assumes facts not in</p> <p>23 evidence.</p> <p>24 You can answer.</p> <p>25 A. It depends on the accounting</p>	<p style="text-align: right;">Page 64</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. Do you know if AMCK had a copy of</p> <p>3 the Purchase Agreement with Airbus?</p> <p>4 A. I don't know if they had one, but</p> <p>5 that's a confidential document that lessors do</p> <p>6 not have a copy of, that I'm aware of.</p> <p>7 Q. Do you know if AMCK knew the terms</p> <p>8 of Frontier's Purchase Agreement with Airbus in</p> <p>9 2020?</p> <p>10 A. I don't know if they knew the terms</p> <p>11 because I don't know of their dealings with</p> <p>12 Airbus or potentially getting the terms from</p> <p>13 some source, but that's a confidential document</p> <p>14 that they should not have the terms of.</p> <p>15 Q. Do you have an understanding that</p> <p>16 AMCK asked Frontier to ask Airbus for a delay</p> <p>17 in deliveries scheduled for 2020?</p> <p>18 A. Yes.</p> <p>19 Q. Was AMCK involved in any discussions</p> <p>20 with Airbus concerning any delivery delays in</p> <p>21 2020?</p> <p>22 A. I understand that AMCK was</p> <p>23 independent of Frontier discussing the matter</p> <p>24 with Airbus, but I was not involved in those</p> <p>25 conversations and don't have knowledge of them</p>
<p style="text-align: right;">Page 63</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 treatment at that time. Accounting treatment</p> <p>3 changed for when you could book the gain for a</p> <p>4 transaction whether it was up-front or over a</p> <p>5 period of time.</p> <p>6 I just don't recall when that</p> <p>7 accounting treatment changed, whether it was</p> <p>8 before or after this.</p> <p>9 So I'm not certain as to what the</p> <p>10 profit -- how it would be booked. There are</p> <p>11 some other accounting implications that are</p> <p>12 involved that don't make it that</p> <p>13 straightforward and may not result in that</p> <p>14 number.</p> <p>15 Q. Whatever the precise number, which I</p> <p>16 appreciate may depend on accounting methods,</p> <p>17 there was some profit for Frontier to book in</p> <p>18 connection with that transaction, correct?</p> <p>19 A. That's correct. Frontier ran a RFP</p> <p>20 process amongst many lessors, and AMCK competed</p> <p>21 in that and won based off of the terms that</p> <p>22 you're seeing here.</p> <p>23 Q. AMCK was not a party to the Purchase</p> <p>24 Agreement with Airbus and Frontier, correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 65</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 besides being aware that I believe there were</p> <p>3 some.</p> <p>4 And if I could add to that, Airbus</p> <p>5 manages its relationships with its airlines and</p> <p>6 it also manages its relationships with the</p> <p>7 lessors. So I assume that via that</p> <p>8 relationship management they probably had</p> <p>9 conversations with Airbus.</p> <p>10 Q. Do you know if AMCK negotiated</p> <p>11 directly with Airbus concerning any amendment</p> <p>12 to the Purchase Agreement?</p> <p>13 A. I am not aware of them doing that.</p> <p>14 Q. You testified that you were aware</p> <p>15 that AMCK had some kind of discussions with</p> <p>16 Airbus in 2020.</p> <p>17 What gives you that belief?</p> <p>18 MR. HOSENPUD: I'm going to instruct</p> <p>19 you not to answer if it is anything</p> <p>20 related to attorney/client communications.</p> <p>21 Separate and apart from that, you may</p> <p>22 respond.</p> <p>23 A. I'm trying to recall if outside of</p> <p>24 conversations with counsel I was made aware of</p> <p>25 communications with AMCK and Airbus, and I'm</p>

17 (Pages 62 - 65)

<p style="text-align: right;">Page 66</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 not able to recall if outside of discussions</p> <p>3 with counsel there were any conversations.</p> <p>4 Q. Do you know when AMCK first asked</p> <p>5 Frontier to seek delays in deliveries of</p> <p>6 aircraft covered by the Purchase Agreement?</p> <p>7 A. I don't recall the exact date, but I</p> <p>8 believe it was in late March. AMCK proposed a</p> <p>9 number of -- made a number of proposals to</p> <p>10 Frontier in late March through April and into</p> <p>11 early May regarding Frontier delaying the</p> <p>12 delivery of the five aircraft remaining to be</p> <p>13 delivered under the Framework Agreement.</p> <p>14 I don't recall when that first</p> <p>15 request was made, but I recall a first request</p> <p>16 by Jane or a response by Jane to a letter that</p> <p>17 I sent her requesting a deferral of rent. I</p> <p>18 just don't recall if that response included a</p> <p>19 request to delay the deliveries, and I don't</p> <p>20 recall the date that I received that response.</p> <p>21 MR. ALEXANDER: Let's put up</p> <p>22 Exhibit 7, which is a document bearing</p> <p>23 Bates number FRONTIER001974.</p> <p>24 (Thwaytes Exhibit 7, E-Mail Chain,</p> <p>25 Bates Stamped FRONTIER0001974 through</p>	<p style="text-align: right;">Page 68</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 appreciate that we are receiving numerous</p> <p>3 requests for assistance from our clients. As a</p> <p>4 mid-sized leasing company with secured banking</p> <p>5 facilities, we have some limits to our ability</p> <p>6 to forego rental payments completely. Our</p> <p>7 approach is to be constructive," and she goes</p> <p>8 on.</p> <p>9 In the third paragraph, "We would</p> <p>10 like to make Frontier a proposal for assistance</p> <p>11 on your rental payments." She goes on to list</p> <p>12 a number of numbered bullet points.</p> <p>13 "This is our proposal on the 15</p> <p>14 aircraft we have leased to Frontier."</p> <p>15 Take a moment to read that, but do</p> <p>16 you see any requests for delivery delays</p> <p>17 relating to the Airbus Purchase Agreement in</p> <p>18 this March 18 e-mail?</p> <p>19 A. (Document review.) No.</p> <p>20 Q. And in fact point 3 says, "No</p> <p>21 deferral on the remaining 5 A320neo," correct?</p> <p>22 A. Yes, except I think she's referring</p> <p>23 to rent deferral.</p> <p>24 Q. There's no reference in any of these</p> <p>25 points to a delay of deliveries in aircraft to</p>
<p style="text-align: right;">Page 67</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 1976, marked for identification.)</p> <p>3 Q. And, Mr. Thwaytes, this is an e-mail</p> <p>4 from Jane O'Callaghan to you, dated March 18,</p> <p>5 2020.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. And if you scroll on to the next</p> <p>9 page, to the very bottom of the next page, it</p> <p>10 looks like Ms. O'Callaghan is replying to an</p> <p>11 e-mail that you sent on March 16, 2020; is that</p> <p>12 right?</p> <p>13 A. That's right.</p> <p>14 Q. And in your March 16 e-mail you say,</p> <p>15 "Please see the attached concession request</p> <p>16 letter."</p> <p>17 Is that what you were referring to,</p> <p>18 the request for deferral that you sent?</p> <p>19 A. Yes.</p> <p>20 Q. Ms. O'Callaghan replies on March 18</p> <p>21 to say, "Dear Spencer, thank you for your</p> <p>22 letter dated March 16th. As you rightly state,</p> <p>23 the situation at the moment is very troubling,"</p> <p>24 and she goes on.</p> <p>25 The next paragraph, "You may</p>	<p style="text-align: right;">Page 69</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 be purchased from Airbus, correct?</p> <p>3 A. That's correct.</p> <p>4 MR. ALEXANDER: Let's look at what</p> <p>5 we will call Exhibit 8, FRONTIER00198.</p> <p>6 (Thwaytes Exhibit 8, E-Mail Chain,</p> <p>7 Bates Stamped FRONTIER0001198 through</p> <p>8 1200, marked for identification.)</p> <p>9 Q. And, Mr. Thwaytes, this is a</p> <p>10 March 22 e-mail from you to Jane O'Callaghan,</p> <p>11 and it appears to be in response to the e-mail</p> <p>12 that we just looked at.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. And you respond in the e-mail, "Hi</p> <p>16 Jane, we appreciate your understanding of this</p> <p>17 grave situation," and you continue.</p> <p>18 In the third paragraph of your</p> <p>19 e-mail you state, "As our largest lessor, it's</p> <p>20 very important that AMCK provide the requested</p> <p>21 payment deferral, so I respectfully request</p> <p>22 that you please reevaluate our request."</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. There is no discussion in this</p>

<p style="text-align: right;">Page 74</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. And she goes on to describe a</p> <p>3 proposed delay in the delivery schedule of</p> <p>4 those remaining four SLB aircraft, right?</p> <p>5 A. Right.</p> <p>6 Q. So Ms. O'Callaghan wasn't proposing</p> <p>7 any kind of delivery delay with respect to the</p> <p>8 second aircraft, MSN 9549, correct?</p> <p>9 A. Not in this letter.</p> <p>10 Q. Was this the first communication</p> <p>11 from AMCK requesting any delay in deliveries of</p> <p>12 aircraft under the Purchase Agreement with</p> <p>13 Airbus?</p> <p>14 A. I believe so, unless there were</p> <p>15 communications between AMCK and Robert Fanning</p> <p>16 outside of this letter that I'm not aware of or</p> <p>17 don't recall.</p> <p>18 Q. But as you sit here today, you're</p> <p>19 not aware of any other requests from AMCK up to</p> <p>20 this point concerning --</p> <p>21 A. I don't recall any others prior to</p> <p>22 this.</p> <p>23 MR. ALEXANDER: Let's pull up the</p> <p>24 next exhibit, which will be Exhibit 10,</p> <p>25 FRONTIER005663.</p>	<p style="text-align: right;">Page 76</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 the attachment is an Amendment No. 9 to A320</p> <p>3 Family Aircraft Purchase Agreement, dated as of</p> <p>4 September 30, 2011, between Airbus S.A.S. and</p> <p>5 Frontier Airlines, Inc.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. And are you familiar with this</p> <p>9 Amendment No. 9 to the Airbus Purchase</p> <p>10 Agreement?</p> <p>11 A. I am familiar with it, generally.</p> <p>12 Q. Would you please turn to the next</p> <p>13 page -- or rather page 3 of the agreement with</p> <p>14 the Bates number FRONTIER5669.</p> <p>15 Mr. Thwaytes, is it your</p> <p>16 understanding that in this Amendment No. 9 to</p> <p>17 the Airbus Purchase Agreement, Airbus and</p> <p>18 Frontier were agreeing on a change in the</p> <p>19 delivery schedule of aircraft covered by the</p> <p>20 Purchase Agreement?</p> <p>21 A. Yes.</p> <p>22 Q. In the first numbered paragraph</p> <p>23 there, 1, delivery schedule, it states "The</p> <p>24 delivery schedule table set forth in Clause 9.1</p> <p>25 of the Agreement is deleted in its entirety and</p>
<p style="text-align: right;">Page 75</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 (Thwaytes Exhibit 10, E-Mail With</p> <p>3 Attachment, Bates Stamped FRONTIER0005663</p> <p>4 through 5678, marked for identification.)</p> <p>5 MR. HOSENPUD: Could you please</p> <p>6 repeat that again, the Bates number -- I</p> <p>7 see it now.</p> <p>8 MR. ALEXANDER: Certainly. 05663,</p> <p>9 Frontier.</p> <p>10 Q. Mr. Thwaytes, this is a May 5 e-mail</p> <p>11 from Ray Bishop to Paul Lambert and copying you</p> <p>12 and others.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Who is Ray Bishop?</p> <p>16 A. He is a contracts director at</p> <p>17 Airbus.</p> <p>18 Q. Mr. Bishop states, "Hi Paul, Spencer</p> <p>19 and Sharath, attached is a compiled version of</p> <p>20 Amendment No. 9 with the Frontier and Airbus</p> <p>21 signature appended."</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And if you flip down, or scroll down</p> <p>25 to the page with Bates number FRONTIER005667,</p>	<p style="text-align: right;">Page 77</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 replaced with the delivery schedule table</p> <p>3 attached hereto as Appendix A."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Did the original Purchase Agreement</p> <p>7 with Airbus have a delivery schedule in it?</p> <p>8 A. The delivery schedule in the</p> <p>9 Purchase Agreement -- the original Purchase</p> <p>10 Agreement did and then has been amended from</p> <p>11 time to time.</p> <p>12 Q. How many times has that delivery</p> <p>13 schedule been amended?</p> <p>14 A. I don't -- I don't recall how many</p> <p>15 times it's been amended.</p> <p>16 Q. This document that we are looking at</p> <p>17 is Amendment No. 9 to the Purchase Agreement.</p> <p>18 Is it fair to assume that there were</p> <p>19 eight amendments to the delivery schedule?</p> <p>20 A. No.</p> <p>21 MR. HOSENPUD: Excuse me. Object to</p> <p>22 the form of the question, assumes facts</p> <p>23 not in evidence.</p> <p>24 A. No, amendments could be for other</p> <p>25 reasons than changing the delivery schedule.</p>

20 (Pages 74 - 77)

<p style="text-align: right;">Page 82</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 So I believe those are AMCK</p> <p>3 aircraft, but I'm not able to tie the two</p> <p>4 together because there is no unique identifier</p> <p>5 that is the same in the two agreements.</p> <p>6 Q. So let's go back to Exhibit 10,</p> <p>7 which we were just looking at, which is</p> <p>8 Amendment No. 9 to the Purchase Agreement.</p> <p>9 And if we look at, again, row 52,</p> <p>10 which was the aircraft we were just talking</p> <p>11 about, that has a scheduled delivery of</p> <p>12 July 2020.</p> <p>13 Do you know which, if any, of the</p> <p>14 aircraft listed in this table are aircraft</p> <p>15 covered by the Framework Agreement?</p> <p>16 A. I believe aircraft rank 54, that was</p> <p>17 delivered in March 2020. Without being able to</p> <p>18 tie the agreements together, I am basing this</p> <p>19 off of my recollection of the dates that the</p> <p>20 aircraft under the Framework Agreement were</p> <p>21 scheduled to be delivered after we amended the</p> <p>22 Airbus Purchase Agreement.</p> <p>23 So based off of that, aircraft rank</p> <p>24 52, 53, 55 and 57, and I'm not sure if 59 or 60</p> <p>25 because I don't recall after the amendment</p>	<p style="text-align: right;">Page 84</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 delivery months were possible relative to their</p> <p>3 request for delays in delivery.</p> <p>4 Q. Is that correspondence you're</p> <p>5 referring to -- did that take place prior to</p> <p>6 this amendment actually being reached?</p> <p>7 A. I don't recall. I don't recall if</p> <p>8 it was prior or subsequent to. There was -- so</p> <p>9 there was many -- there was a lot of</p> <p>10 correspondence between us and AMCK from the</p> <p>11 middle of -- middle -- second half of March</p> <p>12 through, call it the first half of May</p> <p>13 regarding this situation, and particularly</p> <p>14 related to delaying aircraft. And I just don't</p> <p>15 recall when we initially told them what we</p> <p>16 thought we could achieve based off of our</p> <p>17 negotiations with Airbus.</p> <p>18 Q. But you don't recall, as you sit</p> <p>19 here today, when, if ever, you told AMCK what</p> <p>20 Frontier actually did achieve in its amendment</p> <p>21 with Airbus, correct?</p> <p>22 A. We don't ever tell anybody what we</p> <p>23 achieve in our amendments with Airbus. That's</p> <p>24 confidential.</p> <p>25 Q. Do you know if anyone else at</p>
<p style="text-align: right;">Page 83</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 which aircraft were moved out of the --</p> <p>3 originally, when we amended it out of 2020, if</p> <p>4 they were the Accipiter aircraft or not after</p> <p>5 the amendment was completed. I don't recall</p> <p>6 after that because it's easy to deduce the July</p> <p>7 and the September aircraft, but not after that</p> <p>8 without being able to tie the aircraft between</p> <p>9 the agreements.</p> <p>10 Q. Did you ever tell AMCK that you had</p> <p>11 reached this Amendment No. 9 with Airbus?</p> <p>12 A. I don't know if we explicitly told</p> <p>13 AMCK that we had reached an agreement number</p> <p>14 9 -- or Amendment No. 9 with Airbus.</p> <p>15 Q. If you go back to the first page of</p> <p>16 this document, it's a May 5 e-mail from Ray</p> <p>17 Bishop.</p> <p>18 Do you recall when, if at all, you</p> <p>19 told AMCK that you had reached any amendment</p> <p>20 with Airbus on delivery schedules regardless of</p> <p>21 calling it Amendment No. 9?</p> <p>22 A. I'm not sure if we ever told AMCK</p> <p>23 that we had reached an agreement on an</p> <p>24 amendment with Airbus, but I do recall</p> <p>25 corresponding with AMCK about what delay in</p>	<p style="text-align: right;">Page 85</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Frontier told anyone at AMCK that this</p> <p>3 amendment had been reached with Airbus?</p> <p>4 A. I am not aware of all of the</p> <p>5 conversations that may have occurred or text</p> <p>6 messages that may have been exchanged outside</p> <p>7 of my purview.</p> <p>8 So I am not aware, but I am also</p> <p>9 potentially not aware of correspondence that</p> <p>10 may have taken place.</p> <p>11 MR. ALEXANDER: David, I'm happy to</p> <p>12 keep going, but if you all want to break</p> <p>13 we can take one, otherwise I'm happy to</p> <p>14 take one.</p> <p>15 MR. HOSENPUD: Why don't we do five?</p> <p>16 MR. ALEXANDER: Sure. Off the</p> <p>17 record.</p> <p>18 (Recess taken.)</p> <p>19 BY MR. ALEXANDER:</p> <p>20 Q. All right. Mr. Thwaytes, we have</p> <p>21 been looking at Amendment No. 9 to the Purchase</p> <p>22 Agreement between Frontier and Airbus.</p> <p>23 That amendment was the result of</p> <p>24 negotiations between Frontier and Airbus,</p> <p>25 right?</p>

Page 86

1 THWAYTES - CONFIDENTIAL

2 A. Correct.

3 Q. Was AMCK a party to those

4 negotiations?

5 A. No, as far as I'm aware, unless they

6 were independent of Frontier.

7 Q. When did those negotiations

8 concerning the Airbus Purchase Agreement begin?

9 A. During this very fluid time, we're

10 having conversations with most of our major

11 suppliers frequently. So it's difficult to say

12 when those negotiations began, but if I had to

13 pick a time frame, I would say the beginning of

14 April.

15 MR. ALEXANDER: Let's look at the

16 next Exhibit 11, which is FRONTIER004009.

17 (Thwaytes Exhibit 11, E-Mail With

18 Attachment, Bates Stamped FRONTIER0004009

19 through 4010, marked for identification.)

20 Q. Mr. Thwaytes, this is an April 2

21 e-mail from you to Matthew Saks and Ray Bishop.

22 Do you see that?

23 A. I do.

24 Q. Who is Matthew Saks?

25 A. He was the sales director at the

Page 87

1 THWAYTES - CONFIDENTIAL

2 time at Airbus.

3 Q. You testified a moment ago that

4 there were negotiations between Frontier and

5 Airbus concerning an amendment to the Purchase

6 Agreement.

7 What was your involvement in those

8 negotiations?

9 A. I'm trying to think how to

10 categorize involvement or describe involvement,

11 but directly involved.

12 Q. So you were involved in discussions

13 with Airbus, correct?

14 A. Correct.

15 Q. Did you play any particular role or

16 deal with particular subject areas or were you

17 generally involved in the discussions?

18 A. I would say generally involved in

19 the discussions. Some others on our team may

20 have been specifically involved in doing

21 calculations and our counsel involved in -- in

22 the legal aspects of things as well. So more

23 generally involved.

24 Q. So you were generally involved. You

25 referenced your counsel.

Page 88

1 THWAYTES - CONFIDENTIAL

2 Who else from the Frontier side was

3 involved in the negotiations with Airbus?

4 A. Jimmy Dempsey, Sharath Sashikumar

5 Bindu. Besides counsel, those would be the

6 main people involved.

7 Q. So looking at this Exhibit 11, you

8 state in the e-mail, "Mat and Ray, the

9 indefinite delay in delivering aircraft MSN

10 9549 (see notice attached)."

11 Do you see that?

12 A. I do.

13 Q. What are you referring to there?

14 A. Without seeing that notice and what

15 is in that notice, which would be helpful to

16 determine exactly what I'm referencing, I am

17 going to assume that the notice referenced a

18 delay of that aircraft that was for an

19 indefinite period of time, based off of what

20 I've written here, related to that "see notice

21 attached," and the indefinite period of the

22 delay notice was problematic for us from a cash

23 flow perspective.

24 Q. Why was it problematic from a cash

25 flow perspective?

Page 89

1 THWAYTES - CONFIDENTIAL

2 A. We have PDP payments with Airbus

3 that we receive back when aircraft are

4 delivered. We have money borrowed under a

5 credit facility to finance a portion of those

6 PDP payments as well as our equity, and that

7 is -- that facility is paid down by the amount

8 that they have outstanding on an aircraft when

9 the aircraft is delivered. And we, as we saw

10 in a previous document, have a gain on sale of

11 aircraft, which is another source of cash.

12 So there's three main reasons why,

13 from a cash flow perspective, it's problematic.

14 Q. Why don't we look at the attached

15 notice, which is the next page of this

16 document, and this is a notice from Airbus.

17 "Subject: Postponement of the Delivery

18 Schedule."

19 Do you see that?

20 A. I do.

21 Q. And in the second paragraph, it

22 states, "We regret to inform you that a damaged

23 bracket was discovered in the right hand wing

24 on the aircraft."

25 Do you see that?

<p style="text-align: right;">Page 90</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. So was there -- there was a</p> <p>4 technical problem with MSN 9549; is that right?</p> <p>5 A. According to this document, there</p> <p>6 was.</p> <p>7 Q. When Frontier began discussing</p> <p>8 potential changes in the delivery schedule in</p> <p>9 the spring of 2020 with Airbus, did Frontier</p> <p>10 ask to reschedule all deliveries or only some</p> <p>11 deliveries?</p> <p>12 A. At that time, I think we have</p> <p>13 concluded the assumption that we had 150 to 200</p> <p>14 deliveries with Airbus. The conversation was</p> <p>15 not to delay all of the deliveries, all of</p> <p>16 those 150 to 200 aircraft.</p> <p>17 Q. Was there some subset that you chose</p> <p>18 to discuss a delivery delay regarding?</p> <p>19 A. Near-term aircraft and near term</p> <p>20 over -- near-term aircraft.</p> <p>21 Q. Did you discuss with Airbus only</p> <p>22 changing the delivery schedule for aircraft</p> <p>23 covered by the Framework Agreement?</p> <p>24 A. No, outside of -- in addition to</p> <p>25 that.</p>	<p style="text-align: right;">Page 92</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 change in the delivery schedule for?</p> <p>3 A. Not -- only particular aircraft in</p> <p>4 relation to periods of time. So we did not</p> <p>5 pick and choose aircraft within a period of</p> <p>6 time. We just chose the aircraft that were in</p> <p>7 a period of time.</p> <p>8 Q. Let's go back to the first page of</p> <p>9 this Exhibit 11.</p> <p>10 So as we spoke about in the first</p> <p>11 paragraph of this e-mail, you reference the</p> <p>12 indefinite delay in delivering aircraft MSN</p> <p>13 9549.</p> <p>14 And just to confirm, that delay was</p> <p>15 not the result of any request for a change in</p> <p>16 schedule by AMCK, correct?</p> <p>17 MR. HOSENPUD: Object to the form of</p> <p>18 the question, assumes facts not in</p> <p>19 evidence, misstates the document.</p> <p>20 You can answer.</p> <p>21 A. Based off of the notice, the delay</p> <p>22 was because of a manufacturing issue.</p> <p>23 Q. In the second paragraph, you say,</p> <p>24 "We received verbal notice this afternoon that</p> <p>25 our financier is uncomfortable funding aircraft</p>
<p style="text-align: right;">Page 91</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. Just to make sure I understand. In</p> <p>3 addition to the aircraft covered by the</p> <p>4 Framework Agreement, Frontier and Airbus were</p> <p>5 discussing a change in the delivery schedule</p> <p>6 for other aircraft not covered by the Framework</p> <p>7 Agreement, correct?</p> <p>8 A. That's right.</p> <p>9 Q. How many other aircraft not covered</p> <p>10 by the Framework Agreement was Frontier seeking</p> <p>11 a delivery change for?</p> <p>12 A. I don't -- I don't recall how many.</p> <p>13 Q. Was it more than 50?</p> <p>14 A. It's hard to -- it's hard to</p> <p>15 determine how many because change in delivery</p> <p>16 schedule for some aircraft can have a cascading</p> <p>17 effect that causes a change in the delivery</p> <p>18 schedule for other aircraft.</p> <p>19 So I think that the discussions for</p> <p>20 aircraft delivering in 2020 and into 2021, I</p> <p>21 believe it's that period of time, but the</p> <p>22 impact of that it appeared to be more because</p> <p>23 it kind of cascades the delivery stream.</p> <p>24 Q. Understood. Were there particular</p> <p>25 aircraft deliveries that Frontier requested a</p>	<p style="text-align: right;">Page 93</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 deliveries in 2Q 2020, so we anticipate that</p> <p>3 Airbus will work with us to manage the timing</p> <p>4 of upcoming aircraft deliveries."</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Is the financier you're referring to</p> <p>8 AMCK?</p> <p>9 A. Yes, I believe so.</p> <p>10 Q. Did you get a response to this</p> <p>11 e-mail?</p> <p>12 A. I don't -- I don't recall if I did.</p> <p>13 Q. Did anyone at Airbus threaten you</p> <p>14 with a default under the Purchase Agreement?</p> <p>15 A. During this time, when we were in</p> <p>16 discussions with Airbus about deliveries of</p> <p>17 aircraft and about making PDP payments, we were</p> <p>18 told by Airbus numerous times that if we did</p> <p>19 not fulfill our obligations that we risk being</p> <p>20 put into default.</p> <p>21 Q. Who at Airbus said that?</p> <p>22 A. Matt Saks to me. I'm aware of other</p> <p>23 correspondence with others that I can't point</p> <p>24 to but are generally aware of.</p> <p>25 Q. When Matt Saks told you, was that</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 over the phone?</p> <p>3 A. That was.</p> <p>4 Q. You referred to correspondence with</p> <p>5 others.</p> <p>6 Do you know if that correspondence</p> <p>7 was written correspondence?</p> <p>8 A. I don't know if it was written or</p> <p>9 verbal. I don't know if it was written or</p> <p>10 verbal.</p> <p>11 But we were made very aware by</p> <p>12 Airbus that if we didn't fulfill our</p> <p>13 obligations that there was a risk of default</p> <p>14 and that they were taking that very seriously.</p> <p>15 Q. In the first paragraph there, you</p> <p>16 refer to "deferring the scheduled April PDP</p> <p>17 payment" in the middle of that paragraph.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Was that part of the discussions</p> <p>21 regarding a change in delivery schedule?</p> <p>22 A. No, that was in relation to this</p> <p>23 aircraft being -- delivery being delayed and</p> <p>24 the cash inflow that we would have received</p> <p>25 from this aircraft not happening because of the</p>	<p style="text-align: right;">Page 96</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 9549, all of the PDP payments have been made on</p> <p>3 that aircraft. We wouldn't delay the PDP</p> <p>4 payments on that aircraft.</p> <p>5 Aircraft that are delivering further</p> <p>6 out in the future that still have PDP payments</p> <p>7 due on that aircraft, it would. If you delay</p> <p>8 those aircraft, it would delay a PDP payment</p> <p>9 for that aircraft.</p> <p>10 MR. HOSENPUD: Continue to lean in</p> <p>11 because you're dropping slightly at the</p> <p>12 end of your statements.</p> <p>13 THE WITNESS: Will do.</p> <p>14 MR. ALEXANDER: Let's look at</p> <p>15 Exhibit 12, which is FRONTIER003978.</p> <p>16 (Thwaytes Exhibit 12, E-Mail Chain,</p> <p>17 Bates Stamped FRONTIER0003978 through</p> <p>18 3985, marked for identification.)</p> <p>19 Q. All right. Mr. Thwaytes, this is an</p> <p>20 e-mail from you to Ashok Shah, Thomas Frey and</p> <p>21 Sharath Sashikumar Bindu on April 15, 2020.</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And this is the top e-mail on a</p> <p>25 chain, but if you go over to the next page, you</p>
<p style="text-align: right;">Page 95</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 delay.</p> <p>3 So in order to negate that negative</p> <p>4 impact, something that Airbus could do would be</p> <p>5 to delay the -- or defer the scheduled April</p> <p>6 PDP payment, so that we were cash neutral or --</p> <p>7 I don't remember if it would be cash neutral,</p> <p>8 but it would make up for some of the</p> <p>9 difference.</p> <p>10 Q. The April PDP payment you're</p> <p>11 referring to there, would that be a PDP payment</p> <p>12 relating to MSN 9549 or some other aircraft --</p> <p>13 A. No, PDP payments at certain points</p> <p>14 in time are for a number of MSNs that are</p> <p>15 delivering at either -- since the contract was</p> <p>16 signed or from a point in time until the</p> <p>17 aircraft will be delivered.</p> <p>18 So it could be for one aircraft or</p> <p>19 usually for a number of aircraft at once.</p> <p>20 Q. Would delaying a delivery of an</p> <p>21 aircraft also defer Frontier's PDP payment</p> <p>22 obligations relating to that aircraft?</p> <p>23 A. No. Well, let me clarify.</p> <p>24 If an aircraft is going to be</p> <p>25 delivered in a short period of time like MSN</p>	<p style="text-align: right;">Page 97</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 can see that there is a back and forth</p> <p>3 discussion between Frontier folks and Airbus;</p> <p>4 is that right?</p> <p>5 A. That's right.</p> <p>6 Q. In the second page of the document</p> <p>7 Bates number 3979, at the top of the page,</p> <p>8 there's an e-mail from Christopher Jones on</p> <p>9 April 11, 2020, to Jimmy Dempsey and others.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Who is Christopher Jones?</p> <p>13 A. He is -- I believe at the time was</p> <p>14 Matt Saks' boss. So the SVP of sales or</p> <p>15 customers or something for the Americas at</p> <p>16 Airbus.</p> <p>17 Q. Mr. Jones says, "Jimmy. Thanks for</p> <p>18 taking the time to chat this morning. In</p> <p>19 response to your request that Airbus consider</p> <p>20 delaying a number of your 2020 deliveries to</p> <p>21 facilitate third-party financing with AMCK,</p> <p>22 Airbus could contemplate the following starting</p> <p>23 in 2020."</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. And then below that there are a</p> <p>3 couple charts.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. In the second chart with the</p> <p>7 introductory language, "In terms of delivery</p> <p>8 months, this would translate to."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. In the left column of the chart is</p> <p>12 "type," all of which is A320. In the next</p> <p>13 column, "CACID," there are a number of entries.</p> <p>14 The next column is "MSN," which lists certain</p> <p>15 MSN numbers, 9549, 10031, 10089, 10119, 10298</p> <p>16 and 10327.</p> <p>17 Did I read those correctly?</p> <p>18 A. You did.</p> <p>19 Q. And then there are four rows that</p> <p>20 don't have any MSN listed for them; is that</p> <p>21 right?</p> <p>22 A. That's right.</p> <p>23 Q. In the next column to the right, it</p> <p>24 shows a planned delivery, and it lists various</p> <p>25 dates in that column for each of the MSN and</p>	<p style="text-align: right;">Page 100</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 fourth and then I assume the fifth.</p> <p>3 I just don't remember off the top if</p> <p>4 there was any -- there was another lessor</p> <p>5 delivering aircraft in 2020. I just don't</p> <p>6 recall if AMCK's were all in a row or if there</p> <p>7 was -- if one was delivering sooner than the</p> <p>8 other.</p> <p>9 So I'm not sure on the 10298 and</p> <p>10 10327, I believe. And then that</p> <p>11 September 2020, that would also potentially be</p> <p>12 one of the AMCK aircraft because it looked like</p> <p>13 it was planned to be delivered before those</p> <p>14 other two.</p> <p>15 Again, it's difficult to recall and</p> <p>16 then I can't cross-reference the MSNs with what</p> <p>17 you're showing me.</p> <p>18 Q. What would you need -- strike that.</p> <p>19 Where would you look if you wanted</p> <p>20 to determine which aircraft subject to the</p> <p>21 Framework Agreement -- strike that.</p> <p>22 A. I think in the Framework Agreement</p> <p>23 it states that what the expected delivery month</p> <p>24 was and that should, I assume, align with this</p> <p>25 planned delivery month here. That may be a</p>
<p style="text-align: right;">Page 99</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 the unidentified aircraft in the column to the</p> <p>3 left, right?</p> <p>4 A. Yes.</p> <p>5 Q. What does planned delivery mean?</p> <p>6 A. I believe that means the scheduled</p> <p>7 delivery month that Airbus had notified the</p> <p>8 aircraft would be delivered in prior -- well,</p> <p>9 as it stood at this point in time.</p> <p>10 Q. In the column to the right, it shows</p> <p>11 a revised delivery.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. And what do you understand that</p> <p>15 column to represent?</p> <p>16 A. The proposal from Airbus to change</p> <p>17 the delivery month of the aircraft.</p> <p>18 Q. This chart has ten aircraft listed.</p> <p>19 Do you agree?</p> <p>20 A. Yes.</p> <p>21 Q. Which of those aircraft are aircraft</p> <p>22 covered by the Framework Agreement with AMCK?</p> <p>23 A. Without being able to</p> <p>24 cross-reference the MSNs to another document,</p> <p>25 unfortunately, I believe the first three, the</p>	<p style="text-align: right;">Page 101</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 good way to cross-reference the two.</p> <p>3 Q. Well, why don't we put back up</p> <p>4 Exhibit 5, which is AMCK -- there we go.</p> <p>5 This is Schedule 1 to the Framework</p> <p>6 Agreement, which we looked at previously in</p> <p>7 Exhibit 5, and this shows six aircraft and</p> <p>8 scheduled delivery months for each.</p> <p>9 Do you see that?</p> <p>10 A. I can see that.</p> <p>11 Q. Does that help you to assess which</p> <p>12 aircraft --</p> <p>13 MR. HOSENPUD: Wait, wait, wait.</p> <p>14 Let him finish your question before you</p> <p>15 answer. Thank you.</p> <p>16 THE WITNESS: Sure.</p> <p>17 Q. Does that help you to assess which</p> <p>18 aircraft in the April communication from Airbus</p> <p>19 is covered by the Framework Agreement?</p> <p>20 A. It doesn't because I believe that</p> <p>21 between when the Framework Agreement was put in</p> <p>22 place and that schedule that you're showing me,</p> <p>23 Airbus had already issued some delivery delay</p> <p>24 notices that changed the scheduled delivery</p> <p>25 month for these aircraft from what you're</p>

<p style="text-align: right;">Page 102</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 seeing here to what you're seeing in that</p> <p>3 e-mail from Chris Jones under the column</p> <p>4 "Planned Delivery Month," I believe is what it</p> <p>5 said.</p> <p>6 Q. Did Frontier ever provide AMCK with</p> <p>7 those delivery notices from Airbus that you</p> <p>8 referenced?</p> <p>9 A. Those are -- I don't believe we</p> <p>10 provide those delivery notices to the lessors.</p> <p>11 We do notify the lessors of delivery delays.</p> <p>12 Those are -- that's correspondence that's</p> <p>13 between Frontier and Airbus.</p> <p>14 Q. Did anyone at Frontier ever notify</p> <p>15 AMCK about a delivery delay regarding MSN 9549?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. When?</p> <p>18 A. I don't know when, but I assume</p> <p>19 after the delivery -- I'm not sure when, but I</p> <p>20 recall correspondence where AMCK was relieved</p> <p>21 that the aircraft had been delayed a month</p> <p>22 enabling them to provide us a rent deferral for</p> <p>23 a longer period of time while we continued to</p> <p>24 work with Airbus to meet the request that AMCK</p> <p>25 was making for further delaying some of the</p>	<p style="text-align: right;">Page 104</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 identified with a planned delivery of</p> <p>3 April 2020, that's not an aircraft that AMCK</p> <p>4 had requested Frontier postpone delivery of,</p> <p>5 right?</p> <p>6 A. I'm not sure if they requested or</p> <p>7 not. I believe they requested a delay in -- I</p> <p>8 don't recall if that was included in the</p> <p>9 request of delaying the delivery date.</p> <p>10 Q. There were -- at this point in</p> <p>11 April 2020, there were only five aircraft</p> <p>12 remaining to be delivered pursuant to the</p> <p>13 Framework Agreement, correct?</p> <p>14 A. Correct.</p> <p>15 Q. So at least five of the aircraft in</p> <p>16 this chart reflecting a proposed revised</p> <p>17 delivery date were not related to aircraft</p> <p>18 covered by the Framework Agreement, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Why was Frontier proposing to change</p> <p>21 those delivery dates?</p> <p>22 A. To -- because the belief that --</p> <p>23 well, we were trying -- this was a very fluid</p> <p>24 time trying to understand capacity when a</p> <p>25 recovery would take place and our -- at the</p>
<p style="text-align: right;">Page 103</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 other aircraft -- well, all of the aircraft</p> <p>3 left under the Framework Agreement.</p> <p>4 Q. My question was a bit different,</p> <p>5 Mr. Thwaytes.</p> <p>6 It was just are you aware of any</p> <p>7 communication by Frontier to AMCK providing</p> <p>8 notice that Airbus had delayed the delivery of</p> <p>9 MSN 9549?</p> <p>10 A. I don't recall when or who provided</p> <p>11 that correspondence, but in -- but there was</p> <p>12 probably correspondence between Frontier and</p> <p>13 AMCK at the Robert or Sharath level notifying</p> <p>14 them of changes in delivery schedules.</p> <p>15 Q. But as you sit here today, you,</p> <p>16 yourself, don't recall any such communication</p> <p>17 that you were involved in, correct?</p> <p>18 A. No, I'm not usually involved in</p> <p>19 those types of communications.</p> <p>20 Q. Going back to the chart here, we</p> <p>21 have the ten aircraft with various planned</p> <p>22 delivery dates and then ten revised delivery</p> <p>23 dates for those ten aircraft; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. MSN 9549, the first aircraft</p>	<p style="text-align: right;">Page 105</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 time we believed that it was prudent to push</p> <p>3 out the delivery of the aircraft so that we</p> <p>4 didn't have too much capacity later in the year</p> <p>5 and then also so that we could alleviate some</p> <p>6 of the PDP payments that were required on</p> <p>7 aircraft leading up to their delivery, if there</p> <p>8 was still enough time between this period of</p> <p>9 time and when that aircraft would be delivered</p> <p>10 to preserve cash.</p> <p>11 Q. Did any other lessors ask Frontier</p> <p>12 to seek a delay in delivery schedules with</p> <p>13 Airbus?</p> <p>14 A. No.</p> <p>15 Q. Let's turn back to the first page of</p> <p>16 this document.</p> <p>17 At the bottom of the first page is</p> <p>18 an e-mail from Mr. Dempsey dated April 14,</p> <p>19 2020, to Christopher Jones and others.</p> <p>20 And he says, "Chris/Robert, can you</p> <p>21 copy Spencer and Sharath in the response so we</p> <p>22 can analyze the changes. They are copied</p> <p>23 above."</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. Do you recall analyzing changes to</p> <p>3 the delivery schedule proposed by Airbus?</p> <p>4 A. Yeah, I don't recall the particulars</p> <p>5 of it, but I recall doing this -- or being</p> <p>6 involved in this analysis.</p> <p>7 Q. What was the analysis you were</p> <p>8 involved in?</p> <p>9 A. Looking at what the PDP payment</p> <p>10 requirement would be based off of these</p> <p>11 changes, looking at what the cash flows would</p> <p>12 be in total based off of these changes</p> <p>13 including the changes in PDP requirements,</p> <p>14 looking at capacity.</p> <p>15 So how many aircraft and available</p> <p>16 seat miles we had to fly -- or available to fly</p> <p>17 over the delivery stream currently and then</p> <p>18 after these proposed changes.</p> <p>19 So basically looking at the current</p> <p>20 state and then the revised state and the</p> <p>21 changes in cash flow and the changes in</p> <p>22 capacity.</p> <p>23 Q. In the e-mail above that on the</p> <p>24 page, Mr. Bishop replies to Mr. Dempsey and</p> <p>25 others and you stating, "Jimmy, further to your</p>	<p style="text-align: right;">Page 108</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 delivered because of the resulting PDP</p> <p>3 obligations that would result from the changes</p> <p>4 in when the aircraft would be delivered.</p> <p>5 Q. I asked you a moment ago whether any</p> <p>6 other lessors asked Frontier to seek a change</p> <p>7 in delivery schedule, and I believe you</p> <p>8 testified no. I have a follow-up question on</p> <p>9 that.</p> <p>10 Did any sale and leaseback</p> <p>11 counterparties to Frontier ask for Frontier to</p> <p>12 delay any deliveries scheduled with Airbus?</p> <p>13 A. No, not that I'm aware of, no.</p> <p>14 Q. How did Frontier choose -- strike</p> <p>15 that.</p> <p>16 Other than the aircraft subject to</p> <p>17 the Framework Agreement, how did Frontier</p> <p>18 choose what other aircraft to seek delivery</p> <p>19 changes for?</p> <p>20 A. Based off of the impact on PDP</p> <p>21 payments and impact on cash flows from the</p> <p>22 delivery of the aircraft. So the total cash</p> <p>23 flow impact, and then also looking at capacity.</p> <p>24 Really a cash flow exercise and then a capacity</p> <p>25 exercise.</p>
<p style="text-align: right;">Page 107</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 recent discussions with Chris and Robert,</p> <p>3 please find attached a delivery schedule</p> <p>4 scenario for Frontier review. Please let us</p> <p>5 know if you have time this afternoon to discuss</p> <p>6 and we can set up a call, when we can share our</p> <p>7 preliminary estimate the attached delivery</p> <p>8 schedule change would have on Frontier's 2020</p> <p>9 PDP obligations."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Was this proposed revised schedule</p> <p>13 related to a discussion that you were having</p> <p>14 regarding Frontier's PDP obligations?</p> <p>15 A. This looks like it was a response to</p> <p>16 a discussion that Jimmy had with Robert -- or</p> <p>17 with Chris and Robert.</p> <p>18 Q. Do you recall any changes to the</p> <p>19 delivery schedule being discussed during these</p> <p>20 negotiations as a result of your analysis of</p> <p>21 PDP obligations?</p> <p>22 A. We probably gave them feedback on</p> <p>23 the aircraft delivering in the second half of</p> <p>24 2020 into the first half of 2021 on adjustments</p> <p>25 to those aircraft and when they were being</p>	<p style="text-align: right;">Page 109</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. In the e-mail at the top of the</p> <p>3 page, you reply to Ashok Shah and others.</p> <p>4 First of all, who is Ashok Shah?</p> <p>5 A. He was VP of finance at the time.</p> <p>6 Q. At Frontier?</p> <p>7 A. That's right.</p> <p>8 Q. And who is Thomas Frey?</p> <p>9 A. He was the senior manager on the</p> <p>10 strategic sourcing team, who had just moved</p> <p>11 over from being a senior manager on Ashok's</p> <p>12 finance team. And in his role there, he was</p> <p>13 responsible for managing the fleet plan model.</p> <p>14 Q. In your e-mail, you state, "Looping</p> <p>15 Thomas into this to assist needs be as we need</p> <p>16 to run through the FP&A fleet plan."</p> <p>17 Do you see that?</p> <p>18 A. Yep.</p> <p>19 Q. What did you mean by that?</p> <p>20 A. So our financial planning and</p> <p>21 analysis team that Ashok was responsible for</p> <p>22 was responsible for keeping our fleet plan,</p> <p>23 which includes a forecast of the aircraft to be</p> <p>24 delivered and the resulting cash flows that</p> <p>25 come out of it and capacity that comes out of</p>

<p style="text-align: right;">Page 110</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 it.</p> <p>3 Q. Do you recall discussing the result</p> <p>4 of running this through the FP&A fleet plan?</p> <p>5 A. I don't recall any particular</p> <p>6 discussion, but I'm sure we had discussions</p> <p>7 around the result of this.</p> <p>8 Q. Do you recall any general</p> <p>9 discussions?</p> <p>10 A. I don't recall any specific things</p> <p>11 discussed, but generally, I'm sure we discussed</p> <p>12 this and -- and reviewed the output of it and</p> <p>13 made recommendations accordingly.</p> <p>14 Q. You say that you're sure you did</p> <p>15 that but just don't recall what you actually</p> <p>16 did; is that fair to say?</p> <p>17 A. Yeah, that's fair to say.</p> <p>18 Q. Let's turn to the attachment to this</p> <p>19 document with the Bates 3981. And just to</p> <p>20 place it in context, this is the attachment to</p> <p>21 the Ray Bishop e-mail on April 15, which it</p> <p>22 looks like you included in your reply to your</p> <p>23 Frontier team.</p> <p>24 If you look here at the page 3981,</p> <p>25 you see a chart that shows rank, CACID, type</p>	<p style="text-align: right;">Page 112</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 well, 54 was I believe that, but it doesn't say</p> <p>3 the date it was delivered. I'm assuming that</p> <p>4 that's that March aircraft that was the first</p> <p>5 aircraft delivered under the agreement --</p> <p>6 Q. You cut out there, Mr. Thwaytes.</p> <p>7 A. I said that the one that says</p> <p>8 delivered doesn't say when it was delivered,</p> <p>9 but I'm assuming that that's the March aircraft</p> <p>10 that was the first aircraft delivered under the</p> <p>11 Framework Agreement.</p> <p>12 55 and 56. And then I don't know if</p> <p>13 57 or 58, as they are both June deliveries, one</p> <p>14 of those two.</p> <p>15 Q. So there were other aircraft</p> <p>16 scheduled to be delivered in the spring 2020</p> <p>17 time period that were not covered by the</p> <p>18 Framework Agreement; is that correct?</p> <p>19 A. Yes, I believe so, like one.</p> <p>20 Q. And Frontier was requesting a change</p> <p>21 in the delivery schedule for that aircraft as</p> <p>22 well, right?</p> <p>23 A. So there were two things going on.</p> <p>24 One was Frontier was making requests.</p> <p>25 Second was Airbus was shutting down</p>
<p style="text-align: right;">Page 111</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 and then delivery dates in purple color for the</p> <p>3 delivery dates as of Amendment 8 and yellow</p> <p>4 color for delivery dates as of -- or the new</p> <p>5 delivery schedule.</p> <p>6 A. I see that.</p> <p>7 Q. In the purple column, "Current as of</p> <p>8 Amendment 8," what does SDM/SDQ mean?</p> <p>9 A. Scheduled delivery month, scheduled</p> <p>10 delivery quarter.</p> <p>11 Q. As you look at this chart -- strike</p> <p>12 that.</p> <p>13 In the column on the right, it shows</p> <p>14 the new delivery schedule. If we look at rank</p> <p>15 52, the first row in the chart, it shows a</p> <p>16 March 2020 delivery date as of Amendment 8 and</p> <p>17 a June 2020 new delivery schedule date.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Can you tell by looking at this</p> <p>21 chart which, if any, of these aircraft were</p> <p>22 covered by the Framework Agreement?</p> <p>23 A. 52 and 53. Again, it's hard to tie</p> <p>24 directly because of not having the same unique</p> <p>25 identifier for each, but 52 and 53. I think --</p>	<p style="text-align: right;">Page 113</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 its delivery, they call them their fall, for a</p> <p>3 period of time because of the height of COVID</p> <p>4 into -- I forget if they shut it down for all</p> <p>5 of April, something like that.</p> <p>6 So there were some complications as</p> <p>7 well as a result of Airbus and Airbus needing</p> <p>8 to delay the delivery of some aircraft in order</p> <p>9 to manage their industrial process given that</p> <p>10 they had to stop people from coming to work</p> <p>11 because of COVID.</p> <p>12 Q. My question was, did Frontier</p> <p>13 request a change in delivery schedule for</p> <p>14 aircraft during the spring of 2020 other than</p> <p>15 aircraft covered by the Framework Agreement?</p> <p>16 A. I don't believe Frontier requested a</p> <p>17 change in the delivery schedule for aircraft in</p> <p>18 the spring of 2020 other than aircraft in the</p> <p>19 Framework Agreement, but Airbus may have</p> <p>20 requested that because they needed to -- they</p> <p>21 were unable to complete manufacturing the</p> <p>22 aircraft due to COVID restraints on their</p> <p>23 manufacturing facility.</p> <p>24 I think I mentioned earlier that</p> <p>25 Frontier was focused on delaying aircraft in</p>

<p style="text-align: right;">Page 114</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 the second half of 2020 and into 2021 to</p> <p>3 provide cash flow relief and to manage</p> <p>4 capacity.</p> <p>5 Q. So just looking at this page, there</p> <p>6 looks to be roughly 20 aircraft identified.</p> <p>7 All of those involve change in</p> <p>8 delivery dates in this proposal; is that right?</p> <p>9 A. (Document review.)</p> <p>10 I'm just looking through to make</p> <p>11 sure that that's accurate for all of them, but</p> <p>12 yes, it looks accurate for all of them.</p> <p>13 Q. And no more than five of those</p> <p>14 still-to-be-delivered aircraft related to the</p> <p>15 Framework Agreement, correct?</p> <p>16 A. That's -- well, there is a sixth,</p> <p>17 which I believe is that "delivered" one there.</p> <p>18 So I think six total of these were related to</p> <p>19 the Framework Agreement.</p> <p>20 Q. All right.</p> <p>21 MR. ALEXANDER: Let's pull up</p> <p>22 FRONTIER009068, which I believe will be</p> <p>23 Exhibit 13.</p> <p>24 (Thwaytes Exhibit 13, E-Mail Chain,</p> <p>25 Bates Stamped FRONTIER009068 through 9076,</p>	<p style="text-align: right;">Page 116</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 And you see, similar to the charts</p> <p>3 that we have looked at, this shows a list of</p> <p>4 different aircraft delivery dates by Airbus</p> <p>5 Rank, CACID, Aircraft Type, Original SDM,</p> <p>6 Original Year, Revised (From Airbus). Then in</p> <p>7 columns I and J, (From Airbus V2) and in column</p> <p>8 L, Revised (F9 Counter).</p> <p>9 Can you tell, from looking at this</p> <p>10 chart, which of the aircraft reflected here are</p> <p>11 covered by the Framework Agreement?</p> <p>12 A. This chart looks similar to the</p> <p>13 chart we looked at recently with that delivered</p> <p>14 aircraft noted as the third one.</p> <p>15 So based off of that, I would say</p> <p>16 the first five aircraft and then one of the</p> <p>17 June aircraft, probably the first one, but,</p> <p>18 again, I can't tie that directly based off of</p> <p>19 the information here.</p> <p>20 Q. You understand that the column from</p> <p>21 Airbus in yellow reflects Airbus' latest</p> <p>22 proposal for the delivery schedule, right?</p> <p>23 A. Right.</p> <p>24 Q. And then the column to the right of</p> <p>25 that, Revised (F9 Counter), you understand that</p>
<p style="text-align: right;">Page 115</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 marked for identification.)</p> <p>3 Q. Mr. Thwaytes, this is an April 20,</p> <p>4 2020, e-mail from Jimmy Dempsey to Ray Bishop,</p> <p>5 you and others.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. And in this top e-mail Mr. Dempsey</p> <p>9 says, "Please see attached the delivery</p> <p>10 schedule that we believe provides Frontier with</p> <p>11 the appropriate growth levels to close this</p> <p>12 conversation. We need to have a manageable</p> <p>13 growth rate in 2022/3/4 and by sliding 7</p> <p>14 aircraft we achieve this."</p> <p>15 Did I read that correctly?</p> <p>16 A. You did.</p> <p>17 Q. What did you understand appropriate</p> <p>18 growth levels for Frontier to be?</p> <p>19 A. That gets back to what I was talking</p> <p>20 about earlier where our analysis is on capacity</p> <p>21 and cash flow. And capacity results in growth</p> <p>22 level.</p> <p>23 Q. Let's look at page 9071, which</p> <p>24 includes the attachment to Mr. Dempsey's</p> <p>25 e-mail.</p>	<p style="text-align: right;">Page 117</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 to be Frontier's counterproposal to what Airbus</p> <p>3 was proposing in the previous column, right?</p> <p>4 A. That's right.</p> <p>5 Q. Was Frontier proposing to change any</p> <p>6 of the delivery dates concerning the aircraft</p> <p>7 covered by the Framework Agreement?</p> <p>8 A. Originally, Jane had sent me an</p> <p>9 e-mail that asked for a three to six-month</p> <p>10 delay in the aircraft under -- that were to be</p> <p>11 delivered under the Framework Agreement, and we</p> <p>12 were working to achieve, at the minimum, a</p> <p>13 three-month delay in the aircraft under the</p> <p>14 Framework Agreement to meet her request.</p> <p>15 Airbus was very motivated to get the</p> <p>16 aircraft delivered as soon as possible because</p> <p>17 they also had a cash flow problem, and they</p> <p>18 don't get paid for the aircraft besides the PDP</p> <p>19 payments until they are delivered. And these</p> <p>20 aircraft were fully assembled or very close to</p> <p>21 it, mostly in Mobile, Alabama, where they have</p> <p>22 a small facility where there isn't a lot of</p> <p>23 room to park the aircraft.</p> <p>24 So we made the request to delay all</p> <p>25 of these aircraft including the five that are</p>

<p style="text-align: right;">Page 118</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 AMCK aircraft for a minimum of three months,</p> <p>3 and the feedback we got from Airbus was that</p> <p>4 that's all that they could accommodate.</p> <p>5 So our counter stuck with that, met</p> <p>6 Airbus' requirement and Jane's request of three</p> <p>7 to six months.</p> <p>8 Q. So just to make sure I understand,</p> <p>9 in this counterproposal from Frontier, Frontier</p> <p>10 was not proposing to change any of the most</p> <p>11 recent proposals from Airbus regarding the</p> <p>12 delivery date for the aircraft covered by the</p> <p>13 Framework Agreement, correct?</p> <p>14 A. I believe, in conversations with</p> <p>15 Airbus, we had already concluded that they</p> <p>16 would not delay the aircraft any further than</p> <p>17 this, at this point in time.</p> <p>18 Q. So I'm looking just for a yes-or-no</p> <p>19 answer.</p> <p>20 In this counterproposal from</p> <p>21 Frontier, did Frontier propose to change any of</p> <p>22 the delivery dates for the aircraft covered by</p> <p>23 the Framework Agreement?</p> <p>24 A. Not between the Frontier Airbus V2</p> <p>25 and the revised F9 counter.</p>	<p style="text-align: right;">Page 120</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 15 aircraft listed; is that right?</p> <p>3 A. That's right.</p> <p>4 Q. And then there is a new SDM (Airbus)</p> <p>5 for 2020 of six aircraft; is that right?</p> <p>6 A. That's right.</p> <p>7 Q. What does that column mean?</p> <p>8 A. That means the new number of</p> <p>9 aircraft that are scheduled to be delivered in</p> <p>10 2020.</p> <p>11 (Reporter Clarification.)</p> <p>12 Q. And then the column to the right is</p> <p>13 new SDM (Frontier), and it shows six; is that</p> <p>14 right?</p> <p>15 A. That's right.</p> <p>16 Q. So both Airbus and Frontier were</p> <p>17 proposing six aircraft to be delivered during</p> <p>18 2020; is that right?</p> <p>19 A. That's right.</p> <p>20 Q. As opposed to the original plan for</p> <p>21 there to be 15 aircraft to be delivered in</p> <p>22 2020, right?</p> <p>23 A. That's right.</p> <p>24 Q. Those aircraft that were originally</p> <p>25 scheduled for 2020 but not to be included in</p>
<p style="text-align: right;">Page 119</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. So this chart with some revisions</p> <p>3 from Frontier relates to aircraft not covered</p> <p>4 by the Framework Agreement, correct?</p> <p>5 MR. HOSENPUD: Object to the form of</p> <p>6 the question, misstates the chart and</p> <p>7 information in it.</p> <p>8 You can answer.</p> <p>9 A. It appears to cover aircraft in the</p> <p>10 Framework Agreement and outside of the</p> <p>11 Framework Agreement.</p> <p>12 Q. The proposed changes that Frontier</p> <p>13 was making as reflected in this chart, those</p> <p>14 changes do not relate to aircraft covered by</p> <p>15 the Framework Agreement, correct?</p> <p>16 A. (Document review.) Correct.</p> <p>17 Q. Let's go back to the first page of</p> <p>18 this document, to Mr. Dempsey's e-mail.</p> <p>19 He says -- well, he includes an AC</p> <p>20 count comparison with years of 2020 and 2021,</p> <p>21 and then there's other information that's</p> <p>22 redacted underneath that.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. For 2020, there's an original SDM of</p>	<p style="text-align: right;">Page 121</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 2020 according to this proposal, when would</p> <p>3 those be delivered?</p> <p>4 A. What you're not seeing here, and in</p> <p>5 that chart below that we were looking at</p> <p>6 because it's redacted, are the delivery years</p> <p>7 post 2021 where there were changes in aircraft</p> <p>8 delivery periods.</p> <p>9 So to answer your question, you</p> <p>10 would see that flow down further into other</p> <p>11 years that are redacted in this document.</p> <p>12 Q. Mr. Dempsey goes on to say, "This</p> <p>13 proposal is dependent on the following," and he</p> <p>14 lists four numbered points there.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. The first point is "Extension of XLR</p> <p>18 election by six months to year end</p> <p>19 (December 31, 2020)."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. What do you understand that to mean?</p> <p>23 A. We have --</p> <p>24 THE WITNESS: David, this is a bit</p> <p>25 confidential as well.</p>

<p style="text-align: right;">Page 138</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. So if you could please look at this</p> <p>3 document, you will see it's a March 16, 2020,</p> <p>4 e-mail from you to Jane O'Callaghan, subject,</p> <p>5 "Concession Request Letter."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Do you recall sending a concession</p> <p>9 request letter to AMCK at this time?</p> <p>10 A. Yes.</p> <p>11 Q. If we could go to the next page of</p> <p>12 the document with Bates number 241, there's a</p> <p>13 letter dated March 16, 2020, to Jane</p> <p>14 O'Callaghan.</p> <p>15 And if you scroll to the next page,</p> <p>16 you'll see it's signed by you; is that right?</p> <p>17 A. That's right.</p> <p>18 Q. What were you asking for in this</p> <p>19 letter?</p> <p>20 A. I was asking for the rent payments</p> <p>21 between the upcoming rent payments -- well, the</p> <p>22 rent payments due between the date of this</p> <p>23 letter and I believe the end of June of 2020 to</p> <p>24 be deferred and then return of one-month</p> <p>25 security deposit.</p>	<p style="text-align: right;">Page 140</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 it at no.</p> <p>3 Q. In the paragraph just below numbered</p> <p>4 points 1 and 2, which you described as, "1. All</p> <p>5 lease rent payments due between the date of</p> <p>6 this letter and June 30, 2020 will be deferred;</p> <p>7 and 2. Return of one month's rent security</p> <p>8 deposit."</p> <p>9 In that next paragraph, you say,</p> <p>10 "The above concessions would be documented in a</p> <p>11 mutually agreed deferral and concession</p> <p>12 agreement."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. What did you mean by that?</p> <p>16 A. That once we came to an agreement,</p> <p>17 we would document that agreement.</p> <p>18 Q. So you expected that if your request</p> <p>19 for a deferral was granted, that would be</p> <p>20 documented in an agreement?</p> <p>21 A. Yeah, once the final agreement on</p> <p>22 the deferral was granted, it would be</p> <p>23 documented.</p> <p>24 Q. Did you send substantially similar</p> <p>25 letters to other lessors of Frontier?</p>
<p style="text-align: right;">Page 139</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. In the third paragraph of your</p> <p>3 letter, you say, "Unlike some other companies,</p> <p>4 against the back drop of today's rapidly</p> <p>5 changing landscape, Frontier is determined to</p> <p>6 continue delivering our growth strategy and</p> <p>7 fulfilling expectations of our shareholders,</p> <p>8 including yourselves. Our devotion should,</p> <p>9 however, not be taken for granted."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. What did you mean by your devotion</p> <p>13 should not be taken for granted?</p> <p>14 A. I believe that what I meant was,</p> <p>15 even though we were requesting these, the</p> <p>16 points 1 and 2 here, that our devotion to</p> <p>17 fighting through this crisis that we were in</p> <p>18 should not be taken for granted. Meaning that</p> <p>19 we would try to find all means to be successful</p> <p>20 through the COVID crisis and its impact on the</p> <p>21 airline industry.</p> <p>22 Q. Were you saying, absent some kind of</p> <p>23 assistance, you wouldn't be able to make rent</p> <p>24 payments?</p> <p>25 A. No. I was saying that -- I'll leave</p>	<p style="text-align: right;">Page 141</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 A. I did.</p> <p>3 Q. Did you send substantially similar</p> <p>4 letters to all of Frontier's other lessors?</p> <p>5 A. I believe so.</p> <p>6 Q. How many other lessors are there?</p> <p>7 A. At this point in time, I don't</p> <p>8 remember the exact number, but I would guess</p> <p>9 somewhere around 15.</p> <p>10 Q. Did there come a point in time when</p> <p>11 Frontier made the decision to send this letter</p> <p>12 or substantially similar letters to all of its</p> <p>13 lessors?</p> <p>14 A. Yes.</p> <p>15 Q. When did Frontier make that</p> <p>16 decision?</p> <p>17 A. When the gravity of the situation</p> <p>18 got to the point where we believed that we</p> <p>19 needed to take this action with all of our</p> <p>20 lessors and other significant suppliers.</p> <p>21 Q. Do you recall what time that</p> <p>22 decision was?</p> <p>23 A. I don't remember what time it was,</p> <p>24 but I recall that it was -- I don't recall what</p> <p>25 time it was, no.</p>

<p style="text-align: right;">Page 158</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Accipiter?</p> <p>3 A. I don't remember specifically, no,</p> <p>4 but as one of our lessors, I'm sure we</p> <p>5 considered potential cross-defaults in their</p> <p>6 agreement, just like all of the others.</p> <p>7 Q. Mr. Thwaytes, we looked earlier at</p> <p>8 the concession letter that you wrote to Jane</p> <p>9 O'Callaghan, and you referred in that letter to</p> <p>10 your expectation that any agreement would be in</p> <p>11 writing; is that right?</p> <p>12 A. Any -- yeah, the final agreement</p> <p>13 would be in writing, documented. I forget the</p> <p>14 language exactly.</p> <p>15 Q. And that was your expectation as</p> <p>16 well?</p> <p>17 A. Yes. And that was the result of</p> <p>18 negotiations with other lessors, we put the</p> <p>19 agreements in writing once we came to a final</p> <p>20 agreement.</p> <p>21 Q. How many other lessors did you reach</p> <p>22 such agreements with?</p> <p>23 A. I don't know the number. I don't</p> <p>24 recall the number.</p> <p>25 MR. ALEXANDER: Let's look at</p>	<p style="text-align: right;">Page 160</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Q. And she goes on, "and the other</p> <p>3 agreement is for the aircraft owned by UMB.</p> <p>4 The substance of the omnibus agreement is the</p> <p>5 same was the one aircraft agreement that we</p> <p>6 circulated prior."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And attached to this e-mail, if you</p> <p>10 go to the page Bates numbered 16508, you'll see</p> <p>11 a draft Omnibus Lease Payment Deferral and</p> <p>12 Waiver Agreement, and that document relates to,</p> <p>13 in the first paragraph, UMB; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And these are the -- of the 14</p> <p>16 original leases, these are the leases that deal</p> <p>17 with UMB as owner trustee, right?</p> <p>18 A. I don't recall the owner trustee for</p> <p>19 all of our leases, but we are -- in this</p> <p>20 document, UMB is listed as the owner trustee.</p> <p>21 Q. Would you please look at page 16517?</p> <p>22 This is Schedule 2 of that same</p> <p>23 draft agreement, and it lists, in different</p> <p>24 charts, seven different aircraft, if you scroll</p> <p>25 through to the next few pages.</p>
<p style="text-align: right;">Page 159</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 AMCK16504, and we will call this</p> <p>3 Exhibit 22.</p> <p>4 (Thwaytes Exhibit 22, E-Mail Chain</p> <p>5 With Attachment, Bates Stamped AMCK16504</p> <p>6 through 16531, marked for identification.)</p> <p>7 Q. Mr. Thwaytes, this is an April 1</p> <p>8 e-mail from a Ms. Miao to Jane O'Callaghan and</p> <p>9 copying others including you.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Apologies if I'm mispronouncing the</p> <p>13 name, but Ms. Miao, do you understand to be</p> <p>14 Frontier's counsel at Lane Powell?</p> <p>15 A. Yes.</p> <p>16 Q. She writes, "Hi Jane, we circulated</p> <p>17 a draft lease payment waiver and deferral</p> <p>18 agreement form on March 24. To facilitate</p> <p>19 document execution, we created two omnibus</p> <p>20 agreements to include multiple aircraft. One</p> <p>21 agreement is for the aircraft currently owned</p> <p>22 by WFT."</p> <p>23 Do you understand that to be Wells</p> <p>24 Fargo?</p> <p>25 A. Wells Fargo Trust, I assume.</p>	<p style="text-align: right;">Page 161</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 And if we could go back up to the</p> <p>3 top of Schedule 2 and just call your attention</p> <p>4 to the form of the chart. There's a rent date</p> <p>5 in the left column, which for the first</p> <p>6 aircraft listed there, MSN 8766, describes rent</p> <p>7 dates on April 22, May 22, June 22, July 22 and</p> <p>8 it goes on.</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. And an amount of rent payable, in</p> <p>12 the next column, which shows zero dollars for</p> <p>13 April 22, May 22 and June 22, right?</p> <p>14 A. That's right.</p> <p>15 Q. And then starting on July 22, the</p> <p>16 amount of rent payable is listed as</p> <p>17 \$347,864.42.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And that same number repeats for</p> <p>21 each payment date listed in the chart</p> <p>22 thereafter, right?</p> <p>23 A. That's right.</p> <p>24 Q. Do you have any reason to believe</p> <p>25 that the rent dates listed there are different</p>

<p style="text-align: right;">Page 162</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 from the rent dates for payment under the Lease</p> <p>3 Agreement for MSN 8766?</p> <p>4 A. I don't have -- I don't remember</p> <p>5 what the rent dates are and the amounts in that</p> <p>6 Lease Agreement, but I would have to assume</p> <p>7 that if these are the dates we put in here,</p> <p>8 it's because those are the dates that are in</p> <p>9 the Lease Agreement.</p> <p>10 Q. And if you flip forward to the</p> <p>11 page 16520.</p> <p>12 MS. WANG: Sorry, Jack, which Bates</p> <p>13 number?</p> <p>14 MR. ALEXANDER: 16520. So later in</p> <p>15 the document. There we go.</p> <p>16 Q. This is another draft Omnibus Lease</p> <p>17 Payment Deferral and Waiver Agreement. This</p> <p>18 one, if you look at the first page, with Wells</p> <p>19 Fargo, right?</p> <p>20 A. Yep.</p> <p>21 Q. And if we flip forward to the page</p> <p>22 with Bates number 16529, you see a similar</p> <p>23 Schedule 2, which lists charts for seven</p> <p>24 different aircraft.</p> <p>25 Do you see that? We can scroll down</p>	<p style="text-align: right;">Page 164</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 undetermined because we continued to have</p> <p>3 dealings with AMCK the first part of May.</p> <p>4 So it was kind of an ambiguous end</p> <p>5 date that continued to be pushed out as we</p> <p>6 continued to pursue what AMCK had requested us</p> <p>7 to pursue with Airbus.</p> <p>8 MR. ALEXANDER: Let's pull up</p> <p>9 AMCK16622. This will be Exhibit 23.</p> <p>10 (Thwaytes Exhibit 23, E-Mail Chain,</p> <p>11 Bates Stamped AMCK16622 through 16624,</p> <p>12 marked for identification.)</p> <p>13 Q. This is an April 6, 2020, e-mail</p> <p>14 from Jimmy Dempsey to Paul Sheridan, and he's</p> <p>15 copying you and others.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. And he's replying to a Paul Sheridan</p> <p>19 e-mail on April 6 in which Mr. Sheridan says,</p> <p>20 "Hi Jimmy, we just got off the phone with</p> <p>21 Robert, and so I would like to confirm what we</p> <p>22 discussed. Mindful of the time it might take</p> <p>23 you to reach agreement with Airbus or to make</p> <p>24 some other arrangements and, therefore, of the</p> <p>25 ability for us to reach a deferral agreement,</p>
<p style="text-align: right;">Page 163</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 through the charts to give you a sense.</p> <p>3 A. I get a sense for it.</p> <p>4 Q. Okay. And these charts look similar</p> <p>5 to the charts we just looked at, but do you</p> <p>6 have any reason to believe that any of the rent</p> <p>7 dates or rent payment amounts in any of these</p> <p>8 charts are wrong?</p> <p>9 A. No, I don't have any reason to</p> <p>10 believe that they're wrong.</p> <p>11 Q. Are these the type of documentation</p> <p>12 that you were expecting would be the result of</p> <p>13 your request for a concession?</p> <p>14 A. I believe we had our counsel draft a</p> <p>15 template that we would use to document these</p> <p>16 rent deferrals, and this is that template.</p> <p>17 Q. Mr. Thwaytes, do you understand</p> <p>18 that, in April of 2020, AMCK agreed to a</p> <p>19 ten-day grace period for Frontier's rent</p> <p>20 payment obligations?</p> <p>21 A. I understand that they provided us</p> <p>22 with a ten-day grace period.</p> <p>23 Q. Do you know the end date of that</p> <p>24 grace period?</p> <p>25 A. The end date of the grace period was</p>	<p style="text-align: right;">Page 165</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 we can confirm that we won't take any actions</p> <p>3 or call any defaults linked to nonpayment of</p> <p>4 rents on any aircraft where the rent is due</p> <p>5 from today to 21 April; i.e., for the next ten</p> <p>6 working days."</p> <p>7 Do you see that?</p> <p>8 A. Unfortunately, that's not what's on</p> <p>9 the screen right now.</p> <p>10 MR. HOSENPUD: You have not shown</p> <p>11 that in the document.</p> <p>12 MR. ALEXANDER: I'm sorry. Let's</p> <p>13 make that visible.</p> <p>14 Q. Have a look at it.</p> <p>15 A. (Document review.) I see that.</p> <p>16 Q. So Mr. Sheridan was saying there was</p> <p>17 a ten-day grace period until 21 April, correct?</p> <p>18 A. In his e-mail that's what he states.</p> <p>19 Q. And did you understand that that's</p> <p>20 when the grace period he was talking about</p> <p>21 ended?</p> <p>22 A. At the point in time when he sent</p> <p>23 this e-mail, we understood that that's when the</p> <p>24 grace period ended.</p> <p>25 Q. Did anyone at AMCK ever state in</p>

<p style="text-align: right;">Page 166</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 writing that that grace period was extended?</p> <p>3 A. There was some communication around</p> <p>4 the grace period being extended to May 15, that</p> <p>5 I recall. That's all I recall in writing</p> <p>6 related to a different end of the grace period.</p> <p>7 Q. What can you recall about that</p> <p>8 communication that you referenced?</p> <p>9 A. Without seeing it, I think it was --</p> <p>10 I think it was a counterproposal of some type</p> <p>11 from -- I don't know if it was Paul or Jane. I</p> <p>12 don't recall. I think it was a counterproposal</p> <p>13 from them. I don't remember the date that it</p> <p>14 was sent, but I think it was probably later in</p> <p>15 April. I don't remember.</p> <p>16 Q. Do you know if Frontier accepted</p> <p>17 that counterproposal?</p> <p>18 A. Frontier acted on that</p> <p>19 counterproposal and went to -- continued to try</p> <p>20 to achieve what I think Accipiter was</p> <p>21 requesting in it, but I don't believe Frontier</p> <p>22 accepted the counterproposal.</p> <p>23 Q. Apart from that e-mail that you're</p> <p>24 thinking of, do you recall any other written</p> <p>25 communications from AMCK that you think</p>	<p style="text-align: right;">Page 168</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 A. Not where they explicitly extended</p> <p>3 the ten-day grace period, but conversations</p> <p>4 around us continuing to work to achieve what</p> <p>5 they had requested that we achieve in order to</p> <p>6 get the rent deferral.</p> <p>7 Q. Apart from the ten-day grace period</p> <p>8 referred to in Mr. Sheridan's e-mail, are you</p> <p>9 aware of any other grace period that anyone at</p> <p>10 AMCK granted to Frontier at this time?</p> <p>11 A. Besides the grace period that we had</p> <p>12 in our agreements with them, which were already</p> <p>13 in place at this time, I'm not aware of any</p> <p>14 additional grace periods explicitly being</p> <p>15 provided to us.</p> <p>16 Q. And that's both in writing or</p> <p>17 orally, you're not aware of any, right?</p> <p>18 MR. HOSENPUD: Object to the form of</p> <p>19 the question, assumes facts not in</p> <p>20 evidence.</p> <p>21 You can answer.</p> <p>22 A. No.</p> <p>23 MR. ALEXANDER: Let's mark the next</p> <p>24 Exhibit 24, Frontier's interrogatory</p> <p>25 responses.</p>
<p style="text-align: right;">Page 167</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 extended the ten-day grace period that ended,</p> <p>3 in this e-mail, on April 21?</p> <p>4 A. Yes, there were a lot of</p> <p>5 communications back and forth with AMCK asking</p> <p>6 us to continue to negotiate with Airbus, to</p> <p>7 delay the delivery dates of the aircraft that</p> <p>8 were under the Framework Agreement, a number of</p> <p>9 new proposals, updates on where AMCK was in</p> <p>10 their dealings with -- internally.</p> <p>11 So there were a number of</p> <p>12 communications to us that encouraged us to</p> <p>13 continue to try to progress -- to achieve the</p> <p>14 request that they had made to us in order to</p> <p>15 put the rent deferral in place.</p> <p>16 Q. But were there any communications</p> <p>17 that stated in writing that the ten-day grace</p> <p>18 period was extended?</p> <p>19 A. There was no communication that</p> <p>20 explicitly stated that the ten-day grace period</p> <p>21 was extended, that I recall.</p> <p>22 Q. Apart from written communications,</p> <p>23 were you a part of any discussions orally where</p> <p>24 anyone at AMCK extended the ten-day grace</p> <p>25 period?</p>	<p style="text-align: right;">Page 169</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 (Thwaytes Exhibit 24, Plaintiff</p> <p>3 Frontier Airlines, Inc.'s Response to</p> <p>4 Defendants' First Interrogatories, marked</p> <p>5 for identification.)</p> <p>6 Q. Mr. Thwaytes, I will represent to</p> <p>7 you that this document is a document that</p> <p>8 Frontier provided to defendants in this</p> <p>9 litigation responding to various</p> <p>10 interrogatories, which are requests by AMCK.</p> <p>11 MR. ALEXANDER: If we could, Gege,</p> <p>12 please go to interrogatory number 6.</p> <p>13 Okay.</p> <p>14 Q. Do you see interrogatory number 6</p> <p>15 there, Mr. Thwaytes, asks "For each claim for</p> <p>16 relief set forth in the Complaint, describe</p> <p>17 each category of damages claimed by Frontier</p> <p>18 including by (a) identifying the amount of each</p> <p>19 category of damages (or, if presently unknown,</p> <p>20 an estimate of the amount of damages, (b),</p> <p>21 describing with specificity how Frontier has</p> <p>22 incurred or will incur such damages, (c),</p> <p>23 providing the dates on which such damages were</p> <p>24 incurred and (d) identifying all persons with</p> <p>25 knowledge of such damages."</p>

<p style="text-align: right;">Page 170</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And then what follows in the next</p> <p>5 paragraph is an answer, which includes a number</p> <p>6 of objections.</p> <p>7 In the last sentence on that page,</p> <p>8 it says, "Plaintiff responds as follows:</p> <p>9 Plaintiff claims damages related to its</p> <p>10 agreements with CDB Aviation and Jackson Square</p> <p>11 Aviation, which agreements specifically reduced</p> <p>12 purchase price per aircraft, increased rent per</p> <p>13 aircraft, and provided less favorable return</p> <p>14 condition provisions, less favorable early</p> <p>15 termination options, and less favorable</p> <p>16 on-watch burden. Damages associated with</p> <p>17 Plaintiff's agreement with CDB Aviation total</p> <p>18 approximately \$31,313,400. Damages associated</p> <p>19 with Plaintiff's agreement with Jackson Square</p> <p>20 Aviation total approximately \$21,866,100.</p> <p>21 Plaintiff incurred such damages in or around</p> <p>22 June 2020. Individuals with knowledge of such</p> <p>23 damages include Jimmy Dempsey, Robert Fanning,</p> <p>24 Spencer Thwaytes, and Sharath Sashikumar</p> <p>25 Bindu."</p>	<p style="text-align: right;">Page 172</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 or cycle that you've utilized on the aircraft</p> <p>3 and the engines at return, since those</p> <p>4 components were last overhauled or the aircraft</p> <p>5 went into a heavy check.</p> <p>6 And then -- and then the early</p> <p>7 termination options, I think that that has</p> <p>8 to -- I'm not sure what that has to do with off</p> <p>9 the top. The less favorable on-watch burden is</p> <p>10 a condition where we have to resolve an issue</p> <p>11 on the aircraft and/or engine prior to lease</p> <p>12 return, if there is a condition that is on</p> <p>13 watch. That was not in the AMCK Framework</p> <p>14 Agreement or the AMCK leases.</p> <p>15 Does that answer your question?</p> <p>16 Q. Well, apart from the harm you've</p> <p>17 just described resulting from the termination</p> <p>18 of the Framework Agreement, has Frontier</p> <p>19 suffered any other financial harm that it's</p> <p>20 seeking to recover in this case?</p> <p>21 A. I'm not -- there is additional</p> <p>22 financial harm that Frontier was exposed to</p> <p>23 that I'm not certain is contemplated in the</p> <p>24 damages here.</p> <p>25 For example, extending the delivery</p>
<p style="text-align: right;">Page 171</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Would you please explain your</p> <p>5 understanding of the financial harm suffered by</p> <p>6 Frontier as a result of the termination of the</p> <p>7 Framework Agreement?</p> <p>8 A. The difference between the sales</p> <p>9 price that Accipiter was obligated to pay per</p> <p>10 the Framework Agreement and the sales price</p> <p>11 that we were able to negotiate with CDB and</p> <p>12 Jackson Square, the difference in the present</p> <p>13 value of the rent payments that we would have</p> <p>14 been obligated to pay under Accipiter's</p> <p>15 obligation under the Framework Agreement</p> <p>16 compared to the rent we were able to negotiate</p> <p>17 with CDB and with Jackson Square, the</p> <p>18 difference in return conditions.</p> <p>19 So I don't know the specific</p> <p>20 difference in the returns conditions. There's</p> <p>21 a lot of different returns conditions, but the</p> <p>22 differences could be the amount of hours and</p> <p>23 cycles that are required to be on certain</p> <p>24 components of the aircraft including the engine</p> <p>25 at return, and the rate that you pay per hour</p>	<p style="text-align: right;">Page 173</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 date of the aircraft or delaying the delivery</p> <p>3 date of the aircraft required that Frontier</p> <p>4 have a -- have borrowings under its PDP credit</p> <p>5 facility for a longer period of time, and there</p> <p>6 was interest expense that had to be paid on</p> <p>7 that.</p> <p>8 The cash that Frontier had on</p> <p>9 deposit in support of the PDP payments could</p> <p>10 not be utilized to be invested if it was excess</p> <p>11 or to pay other obligations, pushing out</p> <p>12 some -- or delaying aircraft.</p> <p>13 Also, during this period of time, it</p> <p>14 did not -- that isn't something that -- never</p> <p>15 mind. Strike that last part what I was saying.</p> <p>16 I don't believe that resulted in any</p> <p>17 financial harm, just the change in the delivery</p> <p>18 schedule on the utilization of the aircraft.</p> <p>19 Was I clear there? Sorry. I was</p> <p>20 just thinking through it in my head.</p> <p>21 Q. Thank you.</p> <p>22 Were any of the Lease Agreements for</p> <p>23 the 14 original leases or the more recent lease</p> <p>24 for MSN 10038, were any of those leases</p> <p>25 terminated?</p>

<p style="text-align: right;">Page 174</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 A. Those leases were not terminated.</p> <p>3 Q. Frontier still possesses the</p> <p>4 aircraft under those leases, right?</p> <p>5 A. Frontier still possesses the</p> <p>6 aircraft under those leases.</p> <p>7 Q. Did defendants ever prevent Frontier</p> <p>8 from using those aircraft?</p> <p>9 A. No.</p> <p>10 Q. Let's go back to the category of</p> <p>11 damages you discussed when describing the</p> <p>12 termination of the Framework Agreement.</p> <p>13 First, you referred to the</p> <p>14 difference between sale price that Accipiter</p> <p>15 was under the obligation to pay and the sales</p> <p>16 price negotiated with CDB and JSA.</p> <p>17 Is that related to the different</p> <p>18 purchase price owed by Frontier to Airbus and</p> <p>19 then whatever price was agreed to in the</p> <p>20 sale-leaseback transactions?</p> <p>21 A. There's two components to it. One</p> <p>22 is the difference in what Accipiter was</p> <p>23 obligated to pay and what CDB and Jackson</p> <p>24 Square were, again, willing to pay.</p> <p>25 And then the second part is the</p>	<p style="text-align: right;">Page 176</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 sale price and the different rent values.</p> <p>3 Did you calculate dollar amounts</p> <p>4 related to any of the other categories of</p> <p>5 damages you discussed?</p> <p>6 A. This would be a better question for</p> <p>7 Sharath who was responsible for calculating</p> <p>8 these amounts, but if they are listed in this</p> <p>9 agreement, they should be included in those</p> <p>10 dollar amounts.</p> <p>11 MR. ALEXANDER: Let's pull up</p> <p>12 FRONTIER008478.</p> <p>13 (Thwaytes Exhibit 25, E-Mail With</p> <p>14 Attachment, Bates Stamped FRONTIER008478,</p> <p>15 marked for identification.)</p> <p>16 Q. This is an e-mail from</p> <p>17 Mr. Sashikumar Bindu to you, copying Robert</p> <p>18 Fanning.</p> <p>19 He says, "Hi Spencer, please see</p> <p>20 attached the file updated per our discussion."</p> <p>21 And then, if we go to the next page,</p> <p>22 you see there's a document attached, which is a</p> <p>23 bit difficult to read, but do you see that --</p> <p>24 if we can zoom in, you'll see that there's a</p> <p>25 chart that shows different damages</p>
<p style="text-align: right;">Page 175</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 continued escalation in the purchase price of</p> <p>3 the aircraft as a result of delaying the</p> <p>4 aircraft.</p> <p>5 Q. You also referred to the present</p> <p>6 value of the rent payments compared to the</p> <p>7 rents under the CDB and JSA contracts; is that</p> <p>8 right?</p> <p>9 A. That's right.</p> <p>10 Q. Is it fair to say that the rents</p> <p>11 that will be paid over the life of those</p> <p>12 contracts Frontier is not paying all at once</p> <p>13 today, right?</p> <p>14 A. No. And that's why we did a net</p> <p>15 present value of it. So that you get -- you</p> <p>16 arrive at today's dollars.</p> <p>17 Q. Do you know if the dollar amounts</p> <p>18 reflected in this interrogatory response</p> <p>19 reflect that discount to present value?</p> <p>20 A. I don't -- I don't know that because</p> <p>21 I don't have the math in front of me, but I</p> <p>22 believe that what made it into this document is</p> <p>23 what we calculated as the damages that included</p> <p>24 the net present value of the rent.</p> <p>25 Q. We just spoke about the different</p>	<p style="text-align: right;">Page 177</p> <p>1 THWAYTES - CONFIDENTIAL</p> <p>2 calculations; is that right?</p> <p>3 A. That looks right.</p> <p>4 Q. What we have done is we have taken</p> <p>5 that chart on the left, and we'll put that in</p> <p>6 its own document so you can see it a bit more</p> <p>7 clearly.</p> <p>8 A. Sure.</p> <p>9 (Thwaytes Exhibit 26, Blown-Up</p> <p>10 Chart, Bates Stamped FRONTIER008479,</p> <p>11 marked for identification.)</p> <p>12 Q. But you see there's three columns</p> <p>13 there, AMCK, CDB and JSA. There's a purchase</p> <p>14 price listed for AMCK of 51 million, and that's</p> <p>15 the purchase price provided for in the</p> <p>16 Framework Agreement, right?</p> <p>17 A. Correct.</p> <p>18 Q. And then for CDB, there's a purchase</p> <p>19 price listed of 48.5 million. And for JSA,</p> <p>20 there's a purchase price listed of 49 million,</p> <p>21 right?</p> <p>22 A. Correct.</p> <p>23 Q. And then below that, there's a B/W</p> <p>24 to AMCK.</p> <p>25 What does B/W mean?</p>

45 (Pages 174 - 177)